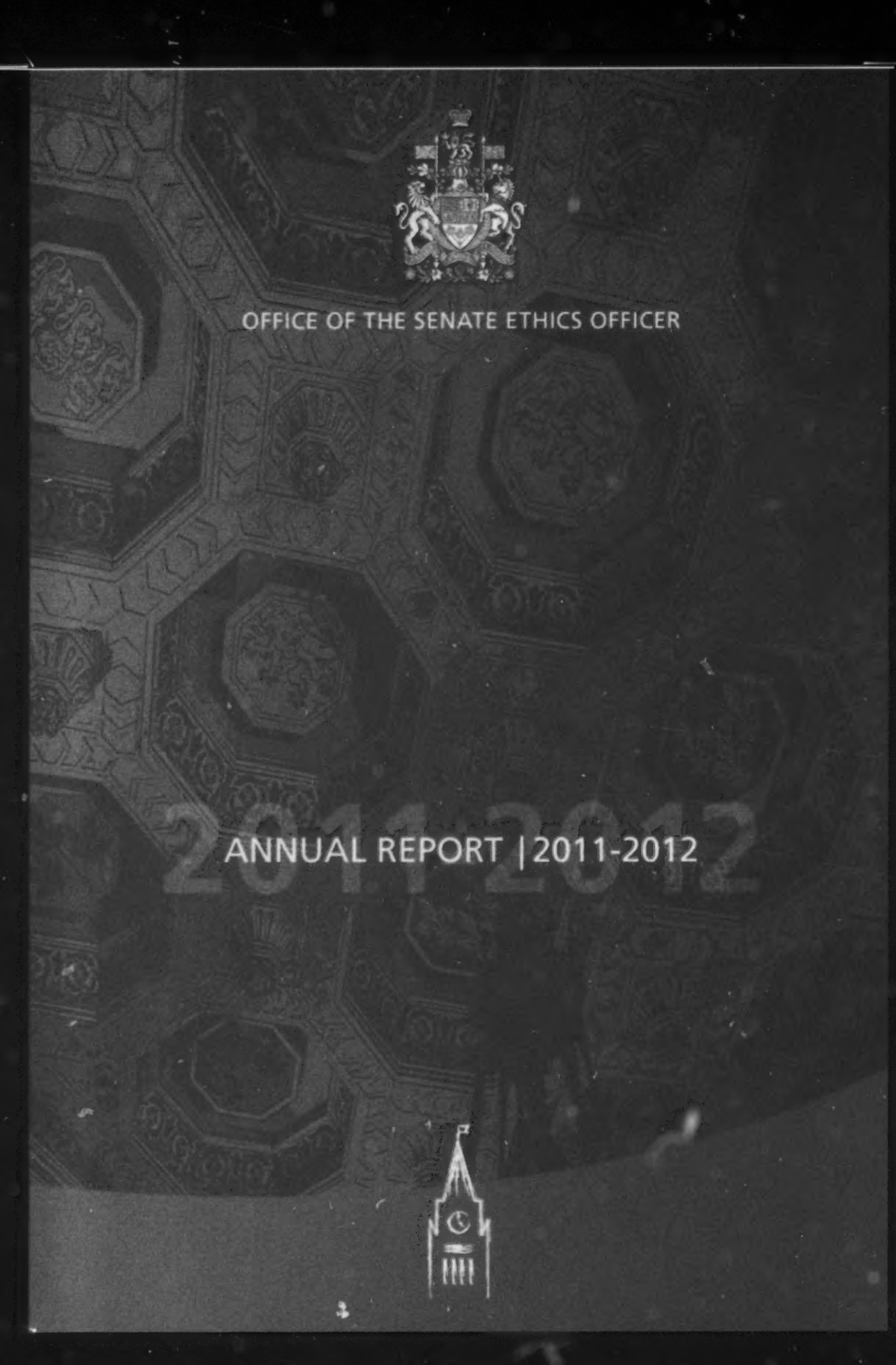

OFFICE OF THE SENATE ETHICS OFFICER

ANNUAL REPORT | 2011-2012

Annual Report of the Senate Ethics Officer 2011-2012

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March 2012

The Honourable Noël Kinsella
Speaker of the Senate
280-F, Centre Block
Parliament Buildings
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the seventh Annual Report of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2011 to March 31, 2012.

Through you, I would like to express my sincere appreciation and gratitude to all senators for the cooperation and support they have provided to me and to my Office.

Yours sincerely,

Jean T. Fournier

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This is the seventh and final Annual Report that I am submitting to the Speaker of the Senate in accordance with the provisions of the *Parliament of Canada Act*. The report covers the period from April 1, 2011 to March 31, 2012.

I had not anticipated writing another annual report on the activities of the Office given that I had informed the Speaker of the Senate, the Honourable Noël Kinsella, on January 27, 2011, that I would be leaving my position effective May 2011, having completed six years of a seven-year term and retiring after 45 years of public service with the Government of Canada in various senior positions.[1]

However, for a variety of reasons, the position has taken longer to fill than expected, and at the request of the Senate, I have continued to fulfil the obligations of the Office out of a sense of duty and responsibility, agreeing to continue in the position to March 31, 2012, upon the expiration of my full seven-year statutory term of office under the *Parliament of Canada Act*.

At the time of writing this report, my successor had not yet been appointed. This is a matter of some concern in that the Office receives on an on-going basis many requests for opinions and advice from senators concerning issues that, by their very nature, are sensitive, complex and which require a timely response. I strongly suggest the Senate establish a mechanism and process by which a successor may be appointed with dispatch upon notice of retirement or resignation of an incumbent. This will ensure a smooth and seamless transition from one Officer's mandate to the next, providing the necessary support upon which senators have come to rely. Succession planning is a crucial part of good governance and this principle is very relevant in respect to the Office of the Senate Ethics Officer.

Given the time constraints we faced this year, my Annual Report is shorter than in previous years. Interested readers are referred to the Office website at www.parl.gc.ca/seo-cse for additional information regarding the Senate conflict of interest regime, including the relevant provisions of the *Parliament of Canada Act*, the *Conflict of Interest Code for Senators*, and past years' annual reports, many of which include selected examples of the opinions and advice given to senators to assist them in meeting their obligations under the Code.

[1] See Appendix A for a copy of of my letter to the Speaker of the Senate, which was also included in my Annual Report 2010-2011.

ANNUAL DISCLOSURE REQUIREMENTS

The *Conflict of Interest Code for Senators* requires that annually I provide a confidential disclosure statement to each senator, which is to be completed under section 27 of the Code. The information that must be declared includes any sources of income over $2,000, any assets and liabilities over $10,000, and outside activities. I review the information received in order to identify any foreseeable real or apparent conflicts of interest. The review also provides an opportunity to identify omissions or ambiguities and to ensure that the information is complete and up-to-date.

Based on this information, I send a letter of advice to each senator regarding his or her particular obligations under the Code and recommend measures, if necessary, to ensure that they are in compliance with the Code. I am also required to prepare an annual public disclosure summary pertaining to each senator. Section 31 of the Code sets out the information that must be declared therein. Once a senator signs his or her public disclosure summary, a certified copy is placed in the Public Registry and is made available for public inspection.

All the requisite disclosure statements were completed during the year and were placed in the Public Registry, both for sitting senators and the seven new senators whose appointment was announced by the Prime Minister on January 6, 2012.

I have made a practice of meeting face-to-face with individual senators as part of the annual disclosure process, believing that this additional proactive interaction between the Office and members of the Senate makes the process more efficient and effective. Based on my experience, a paper exercise alone would not be sufficient for my purposes.

These meetings are very important in my view, because they provide an opportunity to discuss each senator's confidential disclosure statement, my letter of advice, as well as the senator's public disclosure summary. They allow senators to discuss future plans and to obtain advice in this regard. When meetings are done in person, there are nuances which can be picked up that cannot be conveyed via phone or e-mail. Invariably, this dialogue prompts a fruitful exchange between the senators and myself, and establishes a valuable source of feedback and information, which in turn is most helpful in preventing conflicts. Moreover, these meetings are especially useful given the nature and extent of the outside activities in which some senators are engaged. Indeed, I have received favourable comments over the years from senators about the value they find in these meetings.

Unfortunately, due to the unusual circumstances concerning my retirement and the appointment of a successor, it was not possible for me to meet with all senators this year. However, I strongly recommend that the practice be continued. Ethics commissioners in the provinces and territories consider these face-to-face meetings to be essential elements or building blocks of an effective parliamentary ethics regime.

ADVICE AND OPINIONS THROUGHOUT THE YEAR

As noted in previous annual reports, my primary role is an advisory one, and in fact this aspect of my work occupies the largest part of my time. Since establishing the Office in 2005, I have provided approximately 200 opinions and advice **each year** to senators on matters of varying degrees of complexity. This advice has been of both a formal and an informal nature, in writing or verbally as the situation merits, concerning their obligations under the *Conflict of Interest Code for Senators*. This underlines the fact that senators continue to appreciate and avail themselves of the services of the Office in this regard. The goal is to provide quality, timely advice that is practical and useful for senators in order to assist them in complying with the provisions of the Code, and in arranging their personal affairs to ensure that the public interest always takes precedence over their private interests.

The main areas in relation to which senators have sought advice and opinions during the past year have included: activities outside their official parliamentary duties, sponsored travel, gifts and other benefits, declarations of private interests, contracts or other business arrangements with the federal government or any federal agency or body, and disclosure requirements.

DISCLOSURE REQUIREMENTS DURING THE YEAR

Senators have an ongoing obligation throughout the year to disclose changes to their circumstances by filing the proper forms with the Office, according to procedures set out under the Code, in order to ensure that their confidential and public files contain accurate and up-to-date information at all times. These forms are then placed in the Public Registry.

Throughout the year, senators made the following disclosures:

(1) private interests that might have been affected by a matter that was before the Senate or a Committee of the Senate in which they were members [subsection 12(1)];
(2) gifts or other benefits that were received as an expression of courtesy or protocol, or that were received within the customary standards of hospitality that usually accompany the senator's position where these exceeded $500 in value, or any such gifts or other benefits received from one source in a one-year period where their total value exceeded $500 [section 17];
(3) sponsored travel that arose from or related to the senator's position where the travel costs exceeded $500, unless they were paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party [section 18]; and
(4) material changes to the information they had provided in their confidential disclosure statements [subsection 28(4)].

There were 37 such disclosures during the year.

INQUIRIES AND INVESTIGATIONS

In any parliamentary ethics regime there is always a focus, especially from the media, on inquiries and investigations. As I noted in an address to the Australian Public Sector Anti-Corruption (APSAC) Conference several years ago, when ethics commissioners were first created in Canada, the expectation was that this person would be an ethics "Lone Ranger"- someone who would root out corruption and track down the culprits. Quite frankly, through our experience in Canada, we have learned that it is in fact the advisory function to which I earlier referred that is essential to the success of an effective ethics regime. Much to the dismay of the headline writers, we have learned it is more productive to work without a mask and silver bullets.

It is worth clarifying once again the circumstances under which an inquiry may be initiated in the context of the Senate ethics regime. Under section 44 of the *Conflict of Interest Code for Senators*, I may conduct an inquiry: (a) at the direction of the Standing Committee on Conflict of Interest for Senators [subsection 44(1) of the Code]; (b) at the request of a senator who has reasonable grounds to believe that another senator has not

complied with his or her obligations under the Code, where the Senate Ethics Officer determines that an inquiry is warranted [subsections 44(2) to (6)]; or (c) on my own initiative with the approval of the Committee if, after receiving significant evidence, I believe that an inquiry may be warranted [subsections 44(7) to (9)].

In the course of the past year, I received no requests to conduct an inquiry under section 44 of the Code, nor was any evidence of wrongdoing brought to the attention of the Office that would have warranted my undertaking an inquiry. Therefore, there have been no inquiries or investigations during the period covered by this report.

But this is not unusual. In Canadian jurisdictions, investigations by ethics commissioners are a rare occurrence. For example, only one inquiry was conducted under the *Conflict of Interest Code for Members of the House of Commons* this year. Similarly, there was only one in Ontario this year involving a Member. There were no inquiries in other jurisdictions. Over a three-year span, only four inquiries were carried out under the *Conflict of Interest Code for Members of the House of Commons*; the other inquiries that took place during this time period involved Ministers under the *Conflict of Interest Act*. Overall, in all jurisdictions in Canada, the number of inquiries has varied between 2 and 16 from 2004 to 2011.[2]

As I have said on many occasions, I see a clear correlation between the number of requests for opinions and advice and the number of inquiries that are undertaken. The more requests there are for opinions and advice, and the more prevention and education are emphasized, the less the need for costly and time-consuming inquiries and investigations. Where possible, it is far better to attempt to avoid conflicts of interest in the first place, rather than attempting to correct them once they have already arisen. As Benjamin Franklin put it, *"An ounce of prevention is worth a pound of cure."* The main focus of the Canadian model of parliamentary ethics is prevention not punishment.[3] This is one of the main reasons it has received international attention and commendation over the years.

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[2] Table 1 on page 6 sets out the number of inquiries and investigations by ethics commissioners in Canada from 2004 to 2011.

[3] The term "Canadian model" of parliamentary ethics refers to the laws, codes, principles, rules and administrative arrangements and procedures which govern the conduct of parliamentarians in the Senate, in the House of Commons and in provincial and territorial legislatures. Starting with Ontario in 1988, all federal, provincial and territorial legislative bodies have established ethics regimes governing the appropriate behaviour of parliamentarians and appointed independent ethics commissioners with much the same status, powers and duties, although the title of the position may vary, for example, conflict of interest commissioner, integrity commissioner, or ethics officer. The commissioners administer, interpret and apply broadly similar rules and work under the general direction of legislative bodies that are ultimately responsible for the disciplining of members. Belatedly, the House of Commons, the Senate and Quebec appointed ethics commissioners and adopted rules of conduct in 2004, 2005 and 2010 respectively.

Having said this, there will be a need for the Senate Ethics Officer to conduct inquiries sooner or later. Indeed, it is worth noting that during my seven years in office, I received requests from three senators under subsection 42(1) of the Code, to look into serious allegations, widely reported in the media, that they had violated certain provisions of the Code. Just to be clear, the allegations were brought to my attention by the individual senators themselves, not by other senators, or the Standing Committee on Conflict of Interest for Senators or other sources.

The first two opinions, which were released in 2005 and 2009, are available on the Office's website. Although these reports were not "inquiry" or "investigation" reports within the meaning of the Code, they are nonetheless important documents providing precedents to senators and future Ethics Officers. There is no doubt in my mind that there could have been potentially serious consequences for the senators concerned if I had determined that they had contravened the Code. Before I undertook these reviews, the senators in question and I agreed that, in the interest of transparency, I would make the reports available on the Office website immediately upon completion and this was, in fact, done in each case.

TABLE 1 - INQUIRIES AND INVESTIGATIONS BY ETHICS COMMISSIONERS (2004-2011)

	Date of Establishment of Offices	Number of Parliamentarians	2004	2005	2006	2007	2008	2009	2010	2011
Ontario	1988	107	3	0	2	0	2	0	0	1
British Columbia	1990	79	1	0	1	1	1	2	1	0
Nova Scotia	1991	52	0	0	0	0	0	0	0	0
Alberta	1992	83	1	1	0	3	0	0	0	0
N.L.	1993	48	0	0	0	0	0	0	0	0
Saskatchewan	1994	58	2	1	0	0	2	0	0	0
N.W.T.	1998	19	1	0	0	0	0	3	0	0
P.E.I.	1999	27	0	0	0	1	2	1	0	0
New Brunswick	2000	55	0	0	1	0	0	0	0	0
Nunavut	2000	19	1	0	0	0	2	1	0	0
Manitoba	2002	57	0	0	0	0	0	0	0	0
Yukon	2002	18	0	0	0	0	2	0	0	0
House of Commons	2004	308	0	3	4	1	5	1	4	1
Senate*	2005	105	n/a	0	0	0	0	0	0	0
Quebec	2011	125	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0
Total			9	5	8	6	16	8	5	2

Source: Annual Reports by federal, provincial, and territorial ethics commissioners
*In 2005, 2009 and 2011, the Senate Ethics Officer released reports into allegations that particular senators had violated certain provisions of the Code.

REQUEST FOR AN OPINION FROM SENATOR WALLIN

The third request for an opinion was made last July. Senator Wallin requested that I provide her with a written opinion respecting certain allegations raised in media reports, including social media, that the Senator had contravened certain provisions of the *Conflict of Interest Code for Senators* when she voted on Bill C-311, the *Climate Change Accountability Act*. In particular, it was alleged that, by voting at Second Reading on the Bill, she acted in a manner to further her own private interests and those of Oilsands Quest Inc., a company on whose board she sat. It was also alleged that she was required to declare her private interest in Oilsands Quest Inc. when the Bill was being debated in the Senate and then to recuse herself from voting on the measure. I determined that sections 8, 14 and subsection 12(1) of the Code were at issue in this case.

Following a review of the facts and an analysis of the relevant provisions of the Code, I concluded as follows:

- Given that the Bill would have affected all companies responsible for greenhouse gas emissions, not only those in the fossil fuel sector but also those in other sectors of the economy, the Bill would only have affected Oilsands Quest Inc. as one of a very broad class. Therefore, under paragraph 11(2)(*b*) of the Code, the Senator was not considered to have furthered her own private interests or those of Oilsands Quest Inc. by having voted on the Bill.

- While Senator Wallin was required to disclose her private interest in Oilsands Quest Inc., both confidentially, and publicly as part of her public disclosure summary (which she did do), she was not required, under subsection 12(1) of the Code, to make a declaration of a private interest in the Senate when the Bill was under consideration, and consequently, the prohibition against voting in section 14 did not apply to these circumstances. The reason for this conclusion is that, whatever impact the Bill might have had on Oilsands Quest Inc., the company would have been affected as one of a broad class, bringing this matter within the exception in paragraph 11(2)(*b*) of the Code.

- The opinion also notes that a broad class exception is found in virtually all conflict of interest laws and rules for legislators in Canada, as well as in many of those outside Canada. Reference is also made to experts and scholars in the field of ethics who have provided a rationale for including this type of exception as part of any conflict of interests regime for legislators.

For these reasons, I found that Senator Wallin did not contravene section 8, subsection 12(1) or section 14 of the Code and concluded that the allegations against her were without merit. As in the two previous cases, I made the full text of this opinion available on the Office website upon completion.[4]

OFFICE WEBSITE

The Office website has become a useful reference tool for senators and their staff and a convenient source of information for the general public. It is interesting to note that there were 8,127 visits to our website from January 1, 2011 to December 31, 2011, an increase of 29% over the previous year.

Also posted on the Office website is a letter I sent to Mr. Charlie Angus, M.P. Mr. Angus had written to me in early July 2011, offering his opinion on matters relating to the Senate ethics regime, comments which contained a number of important factual errors and misinterpretations. Under normal circumstances, a private reply would have been called for. However, after much thought I took the unusual step of broadly distributing my response because, as I noted in my letter of July 28th:

> *"In reviewing the cover fax page of your correspondence, it seemed to indicate the communication with my office was to be confidential in nature. However, given that the main substance of your document has been posted on your website and that of your party leader, I will be posting this reply on the website of the Office of the Senate Ethics Officer, as well as providing it, along with your letter to the Honourable Terry Stratton and the Honourable Serge Joyal, respectively, Chair and Deputy Chair of the Standing Committee of Interest for Senators, for their information."*

AMENDMENTS TO THE CONFLICT OF INTEREST CODE FOR SENATORS

The most recent revisions to the *Conflict of Interest Code for Senators* occurred four years ago. Important amendments were made in 2008 following discussions between the Standing Committee on Conflict of Interest for Senators and my Office. Included among the key changes was language expressly affirming the independence of the Senate Ethics Officer in providing opinions and advice to senators about the Code, as they relate to each senator's particular set of circumstances. Amendments were also made to require

[4] See Appendix D for a copy of my opinion. Senator Wallin resigned from the Board of Directors of Oilsands Quest Inc. effective December 20, 2011. The company filed for creditor protection under Canadian law in November 2011.

senators to abstain from debate in the Senate or a committee of the Senate where they or their family members have a private interest that may be affected by a matter that is before the Senate or a committee of the Senate. In the case of committee meetings, the changes also require senators to withdraw from the meetings altogether. In addition to these, a number of other amendments were adopted by the Senate during this first review of the Code and these are laid out in the Fourth Report of the Standing Committee on Conflict of Interest for Senators, May 28, 2008. This report is also appended to my Annual Report of 2007-08 (Appendix I).

However, it would be a misconception to think that the Code is complete, with no more work needed to be done. As one goes through the experience of administering an ethics regime, as I have done for the past seven years, it becomes readily apparent over time that improvements and clarifications will always be required.

I drew attention to the need to make further amendments to the Code in my Annual Reports of 2009-10 and 2010-11, based both on my experience in interpreting and applying the Code, and the firm belief that this Code should correspond to the current expectations of both senators and Canadian citizens, the latter of whom expect a high level of transparency and accountability in the actions of their parliamentarians.

I met the Committee in October and December of 2011 to discuss these additional amendments. Regrettably, at the time of writing this report, the Committee has not yet completed its review of the proposed revisions. Striking the right balance between the public's right to know and a parliamentarian's right to privacy is a delicate matter and never easy. I appreciate that the Committee is working hard on this file, but I urge it to redouble its efforts to put these important changes in place quickly, in order to provide my successor with the tools necessary to deal with the issues identified during my period of administration of the Code. I firmly believe that, if these changes are adopted, they will greatly enhance the ethics regime in the Senate.

In brief, I recommended that amendments be made to five major areas of the Code:

First, I recommended that the Code be amended to require the inquiry reports of the Senate Ethics Officer to be made public immediately upon completion, or shortly thereafter. This is the procedure that is in place, and has been so for many years, in all

jurisdictions in Canada.[5] At present, the Senate Ethics Officer is required to report confidentially to the Committee, and his reports are filed away, never to see the light of day. It, in turn, provides its own report to the Senate, which is then made public. This change would, in my view, be a substantial improvement that would not only increase transparency in the context of inquiries, but would also enhance the public's confidence in the Senate ethics regime. It is vital that the public have trust in the system in order for it to be truly effective.

Second, I recommended that the Code be amended to require that the following outside activities of senators be disclosed both confidentially **and** publicly: engaging in employment, the practice of a profession and the carrying on of a business, including a description of these activities. At present, these activities are not publicly disclosed, nor are they confidentially disclosed to me directly. Currently, senators are only required to divulge, in their confidential disclosure statements, any corporations, income trusts and trade unions in which they are directors or officers, and any partnerships in which they are partners, including a description of the activities of each entity. In addition, they are also required to disclose, confidentially to the Senate Ethics Officer, any associations and not-for-profit organizations in which they are directors, officers or patrons, including memberships on advisory boards and any honorary positions. This information is then required to be made public as part of the senators' public disclosure summaries.

Third, I recommended that the Code be amended to require the public disclosure of any source of income over $2,000 received by a senator in the preceding 12 months, any source of income over $2,000 that is likely to be received by the senator in the next 12 months, as well as any assets and liabilities of senators that exceed $10,000. At present, the only income, assets and liabilities that are required to be publicly disclosed are those determined by the Senate Ethics Officer to be relevant to a senator's parliamentary duties and functions, or to be otherwise relevant. As such, the public disclosure of this information is limited. There have seldom been any such public disclosures over the last seven years. For this reason, I am of the view that changes in this area would greatly enhance transparency of the Senate ethics regime.

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[5] Not only are the ethics commissioners' inquiry reports in all jurisdictions in Canada publicly released, but the process that is followed in doing so is the same in most jurisdictions. The inquiry reports are generally provided to the Speaker of the Assembly in question and the Speaker then tables the report in the legislature. The only two exceptions concerning the process are Manitoba and Nova Scotia. Under the *Legislative Assembly and Executive Council Conflict of Interest Act* of Manitoba, a judge of the Court of Queen's Bench, rather than the Conflict of Interest Commissioner, makes the determination concerning an alleged violation of the Act. These decisions would, as a general rule, be available to the public. Moreover, the registrar of the Court is required to certify to the Speaker of the Assembly the decisions of the Court, including any penalty imposed by the Court.

Under the *Conflict of Interest Act* of Nova Scotia, the determination as to whether a member breached the Act may be made either by the Commissioner, or by the Supreme Court of Nova Scotia on the referral of the Commissioner. When made by the Commissioner, the report is filed with the Prothonotary in Halifax, which is then available to the public. When made by the Court, the decisions would also, as a general rule, be available to the public.

Fourth, I recommended that the Code be amended to require the confidential and public disclosure of certain interests of spouses and common-law partners of senators, namely, their outside activities (i.e. those listed in section 5 of the Code), any sources of income over $2,000, and any assets and liabilities over $10,000. At present, the Code requires the confidential and public disclosure of contracts that family members have with the Government of Canada or a federal agency or body, but it does not require the disclosure – either confidential or public – of income, assets and liabilities, and outside activities of any family members. I recommended to the Committee that these additional interests be disclosed, both confidentially to the Senate Ethics Officer, as well as publicly. Confidential disclosure of such interests would increase the effectiveness of the Senate Ethics Officer in providing advice to senators concerning real, apparent, or potential conflicts of interest that involve their spouses' or common-law partners' interests, and thus prevent such conflicts. The public disclosure of such interests would considerably increase transparency in this area.

Finally, I recommended that the public disclosure documents of senators be made available electronically by having them posted on the Office's website. Currently, in order to access these documents, members of the public are required to attend the Office of the Senate Ethics Officer in person during office hours. This makes access to this information rather limited, particularly for Canadians who live outside the Ottawa area and who have the same right of access as those living in the capital region. And while the Office does provide documents by facsimile from time to time, the limited resources of the Office make this approach impractical, time-consuming and expensive. Moreover, the public has come to expect we will take advantage of technology, which is currently not the case. Making these documents available to all Canadians on-line would demonstrate the Senate's commitment to transparency and openness.

CONCLUSION

My recommendation for these changes does not imply in any fashion that the Code is broken. Indeed, as I have affirmed on many occasions, the Senate conflict of interest regime has a solid foundation upon which to build. But I have also stated that there are specific instances where the existing Senate Code is lacking in transparency and accountability, and perhaps more importantly, is lagging behind best practices in Canada and elsewhere.

While the Senate Ethics Officer can be helpful and provide guidance and informed advice to senators from time to time on possible changes to the Code, the ultimate responsibility for the Code lies with the Senate itself. As with other legislatures in Canada and elsewhere, the Senate is the ultimate authority concerning the conduct of its members. Senators "own the Code" so to speak, and are ultimately accountable to Canadians in this regard. It is up to the Senate to take the Code to the next level, to demonstrate initiative and to show ethical leadership.

While the changes I have recommended would be significant, if adopted, the Senate will want to consider further amendments in the future. As I have noted in my many public presentations, codes and rules of conduct cannot remain static in a dynamic environment if they hope to retain their relevance and the trust of the public. The *Conflict of Interest Code for Senators* is a living document, a work in progress and it is essential that senators regularly examine its provisions with a view to making modifications and changes where necessary. It is only with this protocol of constant review that the ethics regime of the Senate will improve and adapt to changing circumstances, public expectations and evolving views concerning ethics and accountability in Canada. It is widely recognized that no code or rules of conduct, whether for parliamentarians or professionals, is ever perfect. The Senate Code is no different.

Having said this, it has always been my view that the Senate could and should play a leadership role and be a "chef de file" as it were, in the field of parliamentary ethics, serving as a model for other Upper Houses.

FAREWELL MESSAGE

Goodbyes are always a challenge – more so in this instance, in that this is the second time I bid farewell in the context of an Annual Report. Leaving this great institution and the professional and personal friendships that I have forged is even more difficult than the first time.

Once again, there are many people to thank, many debts to acknowledge. The first is to my staff, who have been with me since the beginning in 2005, and who have made it possible for the work of the Office to continue in this time of transition and the uncertainty surrounding my succession. They have made this unplanned extension of my term workable, as always, through their professionalism and commitment. I commend their work in the highest manner to all members of the Senate, who have been well-served by their diligence and enthusiasm.

We have endeavoured to operate efficiently through cost-recovery arrangements with the Senate Administration in the areas of security, finance, human resources and information technology. Once again, I wish to extend my appreciation to the Clerk of the Senate, to his staff and to the members of the Standing Committee on Internal Economy, Budgets and Administration who made these arrangements possible. For reasons of transparency and accountability, we have always had the financial statements of the Office audited by an external auditor and tabled in the Senate as part of the Annual Report. This year, the results will be posted separately on our website.

I shall greatly miss working with senators in the first-rate working environment that the Senate provides. These past years as the first Senate Ethics Officer have been a highly rewarding time, and I have learned a great deal.

Very few people have the opportunity to get to know and engage with individual senators and the Senate as an institution, in the environment in which I have been privileged to serve. After several hundred face-to-face meetings with senators, it has been my experience that they appreciate the expectations of Canadians who want to know that when their parliamentarians make important decisions, they are acting in the best interests of those whom they serve, and that they should aspire to a higher standard in their conduct, beyond the minimum requirements of the law.

Senators are honourable, honest and well-intentioned people who have entered public life to serve their fellow Canadians, and who would not knowingly conduct themselves in a manner that would contravene the *Conflict of Interest Code for Senators*. I have been impressed with the range of knowledge senators continually demonstrate, the enthusiasm they bring to their work, their commitment to public service, and their dedication to identifying ways to improve legislation, regulations, and government programs and services.

To my counterparts, Ethics Commissioners across the country, I extend my appreciation and gratitude for sharing your experiences and for your wise counsel. I found the opportunity to exchange views from time to time with colleagues in other jurisdictions, through the Canadian Conflict of Interest Network (CCOIN), to be invaluable. I will miss the annual meetings and their friendship.

It has been a great honour to be appointed as the first Senate Ethics Officer and a rare privilege to serve as an independent Officer of the Senate over a seven-year term.

I request that all senators extend to my successor the same courtesy and cooperation they have provided to me. I wish my successor the very best in what is a challenging and rewarding position – one of the most fascinating I have held during my forty-six years of public service with the Government of Canada.

KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- Senators may not act in any way to further their **private interests**, or those of their family members, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions (section 8).

- Senators may not use their position to **influence** a decision of another person in order to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests (section 9).

- Senators may not use information that is generally not available to the public to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests (section 10).

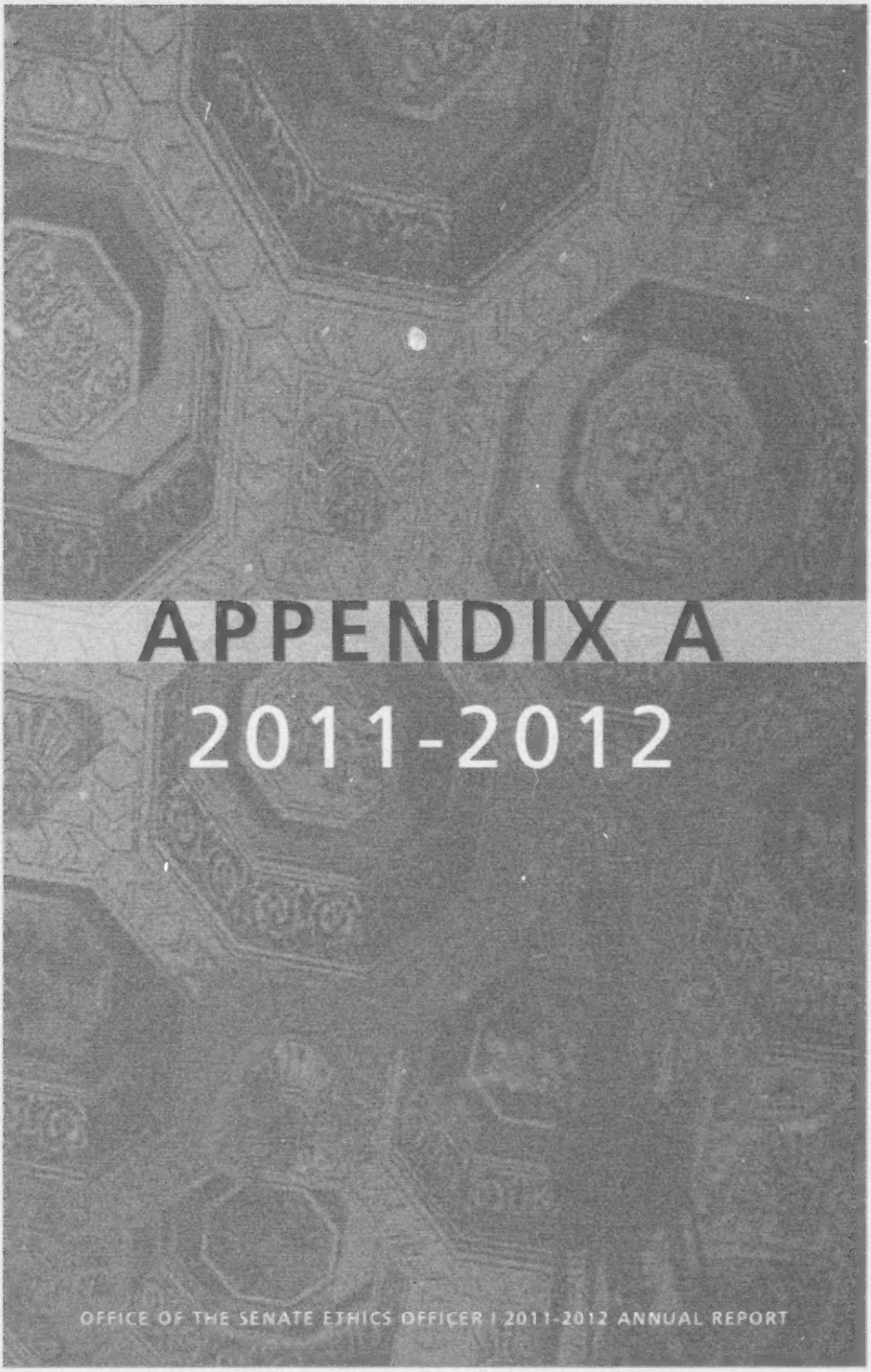
- Senators are expected to make a **declaration**, orally or in writing, when they have reasonable grounds to believe that they or their family members have a private interest that might be affected by a matter that is before the **Senate** or a **committee** of the Senate in which they are members (subsection 12(1)). They **may not participate** in debate on that matter, nor are they **permitted to vote**, though they may abstain (subsections 13(1) and (2) and section 14). In the case of committees, senators **must also withdraw** from the proceedings (subsection 13(2)). With respect to senators who are only participating in committee proceedings, but are not formal members, they too must refrain from participating in debate on any matter in which they have reasonable grounds to believe they have a private interest and they too must withdraw from the proceedings in question (subsection 13(3)).

- Senators may not accept, nor may a family member accept, any **gift** or other **benefit** that could reasonably be considered to relate to their position, except as permitted under the Code. Gifts, benefits and sponsored travel that are acceptable under the Code must be declared to the Senate Ethics Officer if they exceed $500.00 in value (sections 17 and 18) and these must be publicly declared pursuant to paragraph 31(1)(i).

KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE (CONTINUED)

- Senators may not be parties to, or have interests in corporations or partnerships that are parties to, **contracts with the Government of Canada** under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer (sections 20-26).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis and those interests required to be publicly disclosed under the Code are then placed on the public record (sections 27-34).
- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 28(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any **inquiry** (subsection 44(12)).

APPENDICES
2011-2012


APPENDIX A
2011-2012

SENATE
ETHICS OFFICER

CANADA

CONSEILLER
SÉNATORIAL EN ÉTHIQUE

January 27, 2011

The Honourable Noël A. Kinsella
Speaker of the Senate
Room 280-F, Centre Block
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator:

I would like to inform you that I will be leaving my position as Senate Ethics Officer effective May 2011. It has been a high honour for me to serve as the first Senate Ethics Officer. It is a time and memory I will always cherish. I have enjoyed my tenure and appreciate the cooperation and courtesy which you, your predecessor, the Honourable Dan Hays and your colleagues in the Senate, present and past, have extended to me over the last six years. I hope that in some small way the work of the Office has been useful to senators as they seek to comply with the conflict of interest rules of the Senate and resolve potentially problematic situations.

My decision, which has not been taken lightly, comes after spending 45 years with the Government of Canada (12 years as a Deputy Minister), working in 6 different departments, with 2 Royal Commissions, as High Commissioner to Australia and as Senate Ethics Officer, a position to which I was appointed in April 2005.

Although I am looking forward to the next chapter of my life and to spending more time with my family and friends, it is with regret that I am leaving, having completed six years of a seven-year term. I will greatly miss working with senators, the members of my small staff as well as the great work environment that the Senate provides.

After considerable thought, I have decided it is an opportune time for me to step down and for my successor to continue to build on the solid foundation that has been established. I have often said the Senate Code, like other parliamentary and legislative ethics codes across Canada and elsewhere, is a work in progress. Important changes were made in 2008 and I hope that the new Standing Committee on the Conflict of Interest Code for Senators, chaired by Senator Stratton, will soon consider further changes, including those I proposed in my Annual Report 2009-2010 designed to increase the transparency and accountability of the Senate ethics regime and to ensure that the rules of conduct for senators reflect the values and expectations of Canadians over time.

I would like to take this opportunity to express through you, Mr. Speaker, my sincere appreciation to all senators for their support during my term in Office. I will do my utmost to be of assistance to them until my departure. To that end, by the end of May, I expect to have completed my annual meetings with individual senators for the year 2010-2011, the review of the annual disclosure statements in which senators are required to disclose their financial and other interests and the drafting of my sixth and final Annual Report in accordance with the provisions of the *Parliament of Canada Act*, thus allowing the next Senate Ethics Officer to begin his or her term with a clean slate.

I also want to thank the members of the Standing Committee on Conflict of Interest for Senators for their assistance and for the respect they have shown for the independence of the Office. In each of the last six years, the Office provided over 200 opinions and advice to individual senators, both formal and informal, reflective of the level of trust and confidence that has developed between senators and the Office. I also wish to acknowledge with heartfelt thanks the assistance that the Office has received from the Senate Administration over the years in the areas of security, finance, human resources and information technology.

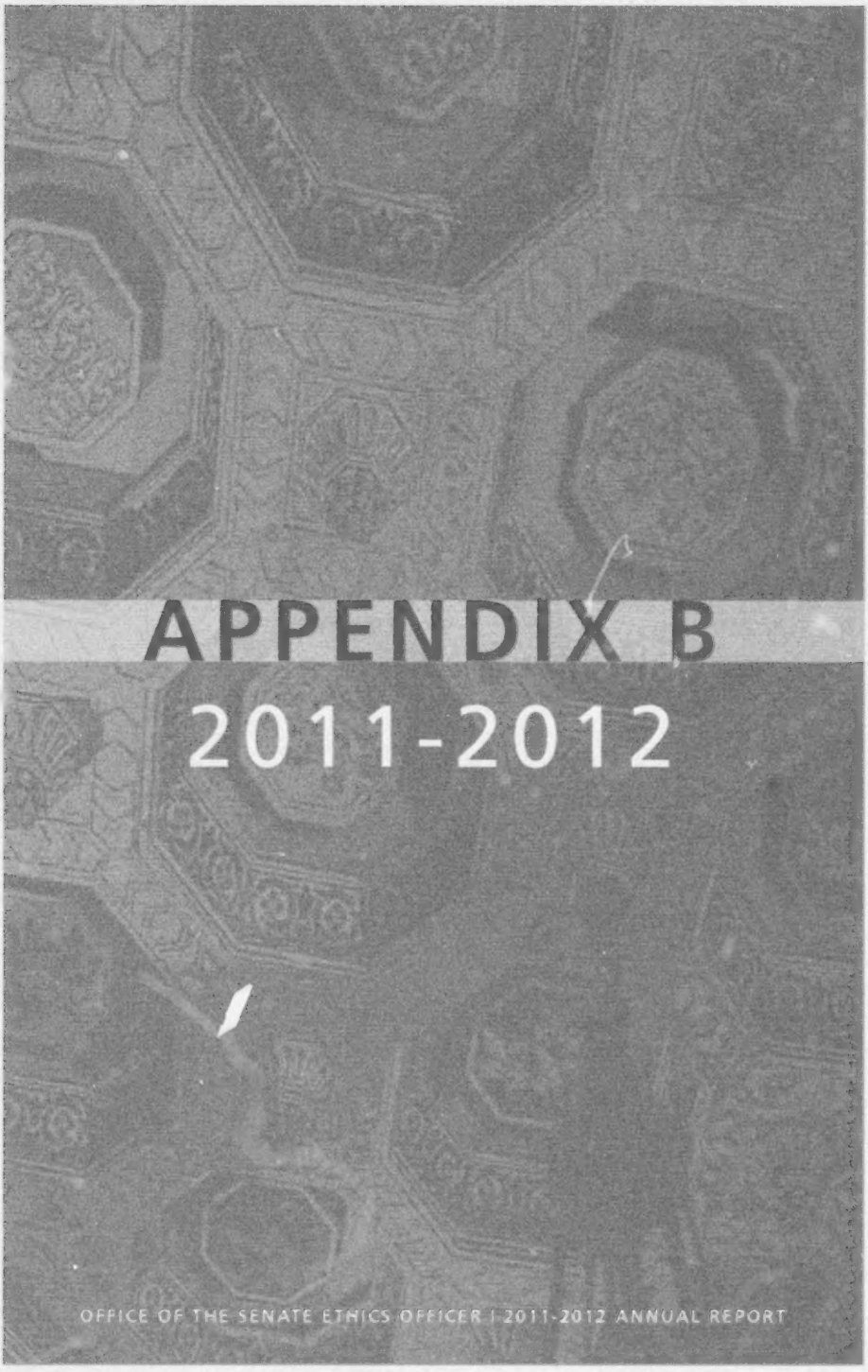
I owe an immense debt of gratitude to my loyal and hard working staff who has been with me since the beginning in 2005. Allow me to express my appreciation and affection to each of them: Louise Dalphy, Deborah Palumbo, Willard Dionne and Jacques Lalonde. I am proud of the role they played in the development of the Office. Without their support and diligence, the creation of this Office would not have occurred as smoothly and efficiently as it has. They will be of great assistance to my successor.

In closing, I propose to send copies of this letter for their information to the Leader of the Government in the Senate, the Honourable Marjory LeBreton, the Leader of the Opposition in the Senate, the Honourable James Cowan, the Chair of the Standing Committee on Conflict of Interest for Senators, the Honourable Terry Stratton, the Deputy Chair of the Standing Committee on Conflict of Interest for Senators, the Honourable Serge Joyal, and to both the Clerk of the Privy Council and the Clerk of the Senate. I also propose to send copies to all other senators to inform them of my plans and to confirm that I will continue to be available over the coming months to advise them concerning their obligations under the *Conflict of Interest Code for Senators* and to assist them in remaining in compliance with the requirements of the Code.

I would like to work with you in terms of coordinating logistics and timing of a public announcement regarding my departure. Thank you again for your confidence and your understanding in this matter.

Yours sincerely,

Jean T. Fournier



APPENDIX B
2011-2012

APPENDIX B

Relevant Excerpts from the Parliament of Canada Act, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c. 9, sections 20.1 to 20.7

SENATE ETHICS OFFICER

Appointment

20.1 The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

Tenure

20.2 (1) The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed for one or more terms of up to seven years each.

Interim appointment

(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Remuneration

20.3 (1) The Senate Ethics Officer shall be paid the remuneration set by the Governor in Council.

Expenses

(2) The Senate Ethics Officer is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties or functions while absent from his or her ordinary place of residence, in the case of a part-time appointment, and ordinary place of work, in the case of a full-time appointment.

Functions – part-time

(3) In the case of a part-time appointment, the Senate Ethics Officer may not accept or hold any office or employment - or carry on any activity - inconsistent with his or her duties and functions under this Act.

Functions – full-time	(4) In the case of a full-time appointment, the Senate Ethics Officer shall engage exclusively in the duties and functions of the Senate Ethics Officer and may not hold any other office under Her Majesty or engage in any other employment for reward.
Deputy head	**20.4** (1) The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office of the Senate Ethics Officer.
Powers to contract	(2) The Senate Ethics Officer may, in carrying out the work of the office of the Senate Ethics Officer, enter into contracts, memoranda of understanding or other arrangements.
Staff	(3) The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Senate Ethics Officer considers necessary for the proper conduct of the work of the office of the Senate Ethics Officer.
Authorization	(4) The Senate Ethics Officer may, subject to the conditions he or she sets, authorize any person to exercise any powers under subsection (2) or (3) on behalf of the Senate Ethics Officer that he or she may determine.
Salaries	(5) The salaries of the officers and employees of the office of the Senate Ethics Officer shall be fixed according to the scale provided by law.
Payment	(6) The salaries of the officers and employees of the office of the Senate Ethics Officer, and any casual expenses connected with the office, shall be paid out of moneys provided by Parliament for that purpose.
Estimates to be prepared	(7) Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the office of the Senate Ethics Officer during the fiscal year.

Inclusion in Government estimates

(8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

Duties and functions

20.5 (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Privileges and immunities

(2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

General direction committee

(3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

Conflict of Interest Act

(4) For greater certainty, the administration of the *Conflict of Interest Act* in respect of public office holders who are ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.

Clarification – powers, etc., of the Senate

(5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

No summons

20.6 (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.

Protection

(2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

Clarification

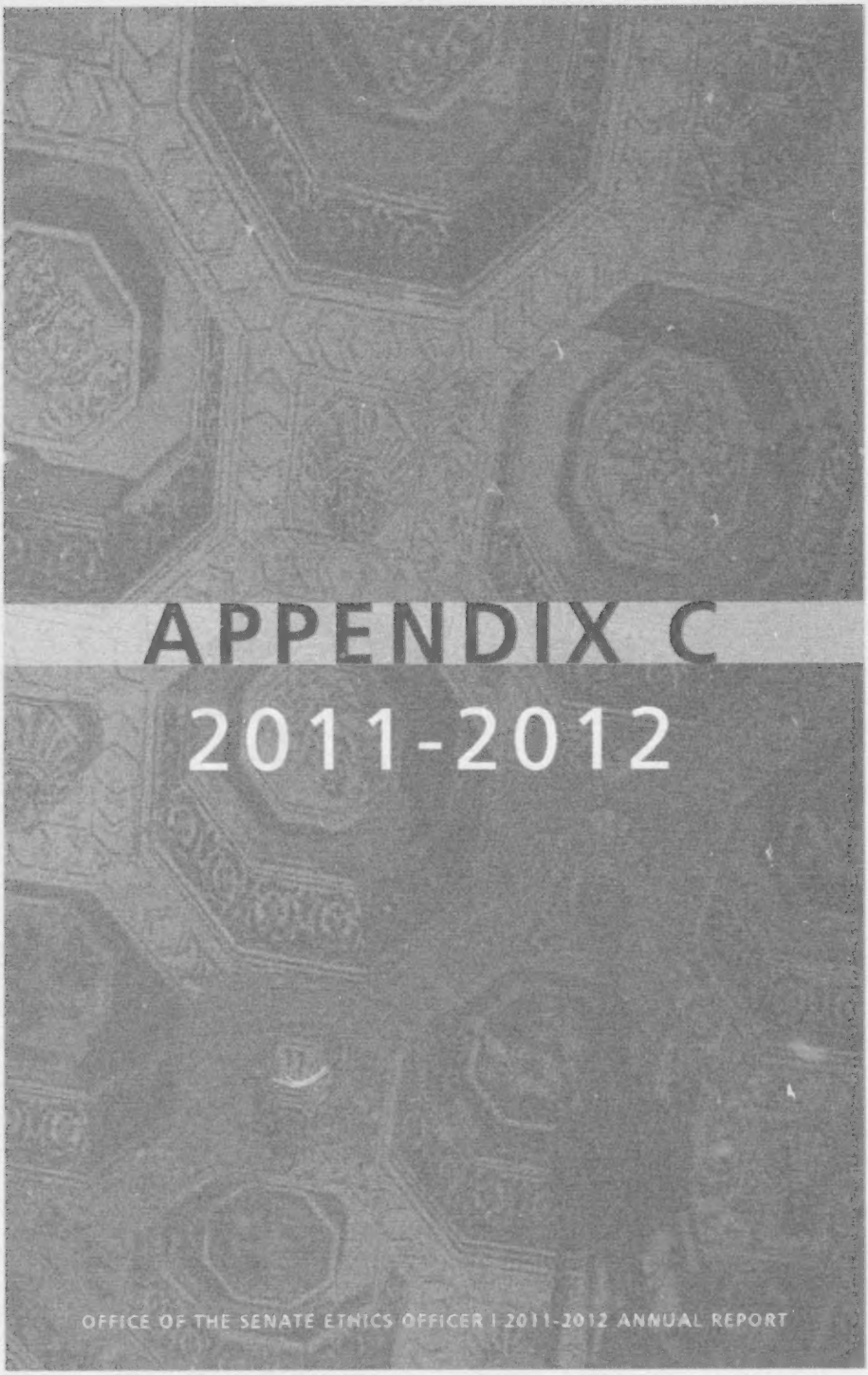
(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.

Annual report

20.7 (1) The Senate Ethics Officer shall, within three months after the end of each fiscal year, submit a report on his or her activities under section 20.5 for that year to the Speaker of the Senate, who shall table the report in the Senate.

Confidentiality

(2) The Senate Ethics Officer may not include in the annual report any information that he or she is required to keep confidential.


APPENDIX C
2011-2012

APPENDIX C

CONFLICT OF INTEREST CODE FOR SENATORS

PURPOSES

Purposes

1. The purposes of this Code are to

(*a*) maintain and enhance public confidence and trust in the integrity of Senators and the Senate;

(*b*) provide for greater certainty and guidance for Senators when dealing with issues that may present foreseeable real or apparent conflicts of interest; and

(*c*) establish clear standards and a transparent system by which questions relating to proper conduct may be addressed by an independent, non-partisan adviser.

PRINCIPLES

Principles

2. (1) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

(*a*) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;

(*b*) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and

(*c*) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

Privacy

(2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

INTERPRETATION

Definitions

3. (1) The following definitions apply in this Code.

"Committee"
« *Comité* »

"Committee" means the Committee designated or established under section 35.

"common-law partner"
« *conjoint de fait* »

"common-law partner" means a person who is cohabiting with a Senator in a conjugal relationship, having so cohabited for at least one year.

"Intersessional Authority"
« *autorité intersessionnelle* »

"Intersessional Authority on Conflict of Interest for Senators" means the committee established by section 38.

"parliamentary duties and functions"
« *fonctions parlementaires* »

"parliamentary duties and functions" means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.

"Senate Ethics Officer"
« *conseiller sénatorial en éthique* »

"Senate Ethics Officer" means the Senate Ethics Officer appointed under section 20.1 of the Parliament of Canada Act.

"spouse"
« *époux* »

"spouse" means a person to whom a Senator is married but does not include a person from whom the Senator is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

Family members

(2) The following are the family members of a Senator for the purposes of this Code:

(*a*) a Senator's spouse or common-law partner; and

(*b*) a child of a Senator, a child of a Senator's spouse or common-law partner, or a person whom a Senator treats as a child of the family, who

(i) has not reached the age of 18 years, or

(ii) has reached that age but is primarily dependent on a Senator or a Senator's spouse or common-law partner for financial support.

ACTIVITIES AND JURISDICTION PRESERVED

Assisting the public

4. Senators are encouraged to continue to assist members of the public as long as their actions are consistent with their obligations under this Code.

Carrying on activities

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

(*a*) engaging in employment or in the practice of a profession;

(*b*) carrying on a business;

(*c*) being a director or officer in a corporation, association, trade union or not-for-profit organization; and

(*d*) being a partner in a partnership.

Existing committee jurisdiction

6. Nothing in this Code affects the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Role of the Speaker

7. Procedural matters referred to in this Code that are expressly provided for in the *Rules of the Senate* are under the jurisdiction and authority of the Speaker rather than the Senate Ethics Officer.

RULES OF CONDUCT

Furthering private interests

8. When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of influence

9. A Senator shall not use or attempt to use his or her position as a Senator to influence a decision of another person so as to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of information

10. (1) If as a result of his or her position, a Senator obtains information that is not generally available to the public, the Senator shall not use or attempt to use the information to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Conveying information

(2) A Senator shall not convey or attempt to convey information referred to in subsection (1) to another person if the Senator knows, or reasonably ought to know, that the information may be used to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Clarification: furthering private interests

11. (1) In sections 8 to 10, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:

(*a*) an increase in, or the preservation of, the value of the person's or entity's assets;

(*b*) the elimination, or reduction in the amount, of the person's or entity's liabilities;

(*c*) the acquisition of a financial interest by the person or entity;

(*d*) an increase in the person's or entity's income from a contract, a business or a profession;

(*e*) an increase in the person's income from employment;

(*f*) the person becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or

(*g*) the person becoming a partner in a partnership.

Clarification: not furthering private interests

(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

(*a*) is of general application;

(*b*) affects the Senator or the other person or entity as one of a broad class of the public; or

(*c*) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

Declaration of a private interest: Senate or committee

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on the first occasion at which the Senator is present during consideration of the matter, make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the Clerk of the committee, as the case may be. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

Subsequent declaration

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

Declaration recorded

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(*h*), shall file it with the Senator's public disclosure summary.

Where declaration *in camera*

(4) In any case in which the declaration was made during an in camera meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

Further declaration

(5) A declaration made *in camera* that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

Declaration of a private interest: other circumstances

(6) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

Declaration of retraction

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

Debate in the Senate

13. (1) A Senator who has made a declaration under section 12 regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.

Debate in committee where Senator is member

(2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

Debate in committee where Senator is not member

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

Debate where Senator has not yet declared

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

Prohibition on voting

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Procedure

15. If a Senator reasonably believes that another Senator has failed to make a declaration of a private interest as required by section 12 or has failed to comply with section 13 or 14, the matter may be raised with the Senate Ethics Officer.

Clarification: having a private interest

16. For the purpose of sections 12 to 14, private interest means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

Prohibition: gifts and other benefits

17. (1) Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that could reasonably be considered to relate to the Senator's position.

Exception

(2) A Senator, and a family member, may, however, accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position.

Statement: gift or other benefit

(3) If a gift or other benefit that is accepted under subsection (2) by a Senator or his or her family members exceeds $500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds $500, the Senator shall, within 30 days after the gift or benefit is received or after that total value is exceeded, as the case may be, file with the Senate Ethics Officer a statement disclosing the nature and value of the gifts or other benefits, their source and the circumstances under which they were given.

Statement: sponsored travel

18. (1) Notwithstanding subsection 17(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator's position. If the travel costs of a Senator or any guest exceed $500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party, the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

Contents of statement

(2) The statement shall disclose the name of the person or organization paying for the trip, the destination or destinations, the purpose and length of the trip, whether or not any guest was also sponsored, and the general nature of the benefits received.

Duplication

(3) Any disclosure made in relation to sponsored travel does not need to be disclosed as a gift or other benefit.

Consent of Senate

19. Gifts, other benefits and sponsored travel accepted in compliance with the requirements of sections 17 and 18 are deemed to have received the consent of the Senate thereto for all purposes.

Government contracts

20. A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that

(*a*) due to special circumstances the contract or other business arrangement is in the public interest; or

(*b*) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Public corporations

21. (1) A Senator may own securities in a public corporation that contracts with the Government of Canada or any federal agency or body unless the holdings are so significant that the Senate Ethics Officer provides a written opinion that they are likely to affect the Senator's obligations under this Code.

Public interest

(2) A contract between a public corporation and the Government of Canada or any federal agency or body that, in the Senate Ethics Officer's opinion, is in the public interest due to special circumstances, shall not preclude a Senator from holding securities in that public corporation.

Government programs

(3) For the purpose of subsection (1), a public corporation shall not be considered to contract with the Government of Canada or any federal agency or body merely because the corporation participates in a Government program that meets the criteria described in section 23.

Trust

(4) If the Senate Ethics Officer is of the opinion that the Senator's obligations under this Code are likely to be affected under the circumstances of subsection (1), the Senator may comply with the Code by placing the securities in a trust under such terms as the Senate Ethics Officer considers appropriate.

Partnerships and private corporations

22. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that

(*a*) due to special circumstances the contract or other business arrangement is in the public interest; or

(*b*) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: Government programs

23. For the purposes of sections 20 and 22, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if

(*a*) the eligibility requirements of the program are met;

(*b*) the program is of general application or is available to a broad class of the public;

(*c*) there is no preferential treatment with respect to the application; and

(*d*) no special benefits are received that are not available to other participants in the program.

Trust

24. Section 22 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:

(*a*) the provisions of the trust have been approved by the Senate Ethics Officer;

(*b*) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;

(*c*) except as provided in paragraph (*d*), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;

(*d*) the trustees may consult with the Senator, with the approval of the Senate Ethics Officer and in his or her presence, if an extraordinary event is likely to materially affect the trust property;

(*e*) in the case of an interest in a corporation, the Senator resigns any position of director or officer in the corporation;

(*f*) the trustees provide the Senate Ethics Officer annually with a written report setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and

(*g*) the trustees give the Senator sufficient information to permit the Senator to submit returns as required by the *Income Tax Act* and give the same information to the appropriate taxation authorities.

Pre-existing contracts

25. The rules in sections 20, 21 and 22 do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.

Interest acquired by inheritance

26. The rules in sections 20, 21 and 22 do not apply to an interest acquired by inheritance until the first anniversary date of the transfer of legal and beneficial ownership. In special circumstances, the Senate Ethics Officer may extend this time period.

DUTY TO DISCLOSE

Confidential disclosure statement: sitting Senators

27. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential statement disclosing the information required by section 28.

Filing date

(2) The date or dates on or before which the annual confidential disclosure statements are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

Confidential disclosure statement: new Senators

(3) Within 120 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

Submission to Committee

(4) Thirty days after the date established under subsection (2), the Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement.

Errors or omissions

(5) If, at any time after the date established under subsection (2), the Senate Ethics Officer has reason to believe that a Senator's confidential disclosure statement contains an error or omission, the Senate Ethics Officer shall notify the Senator concerned and request the Senator to provide the relevant information.

Response within 60 days

(6) Upon receipt of a request under subsection (5), the Senator shall provide the information within 60 days.

Family members

(7) A Senator may file with the Senate Ethics Officer a confidential disclosure statement relating to the Senator's family members so that the Senator may discuss their interests in relation to the Senator's obligations under this Code and receive advice in that regard.

Confidentiality

(8) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep all disclosure statements confidential.

Initial meeting with Senate Ethics Officer

(9) Senators, and in particular newly-summoned Senators, who may have questions regarding their confidential disclosure duties should make every effort to meet with the Senate Ethics Officer before submitting their confidential disclosure statement.

Contents of confidential disclosure statement

28. (1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

(*a*) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;

(*b*) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;

(*c*) the nature but not the amount of any source of income over $2,000 that the Senator has received in the preceding 12 months and is likely to receive during the next 12 months; for this purpose,

(i) a source of income from employment is the employer,

(ii) a source of income from a contract is a party with whom the contract is made,

(iii) a source of income arising from a business or profession is that business or profession, and

(iv) a source of income arising from an investment is that investment;

(*d*) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has directly, or through a subcontract;

(*e*) the source, nature and value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries;

(*f*) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;

(*g*) information regarding the nature but not the value of any assets and liabilities over $10,000; and

(*h*) any additional information that the Senator believes to be relevant to this Code.

Excluded matters

(2) For the purpose of subsection (1), it is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; deposits with a financial institution; guaranteed investment certificates; financial instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

Additional excluded matters

(3) The Senate Ethics Officer may, with the approval of the Committee, establish additional matters not required to be disclosed on the basis that they present no potential to interfere with the obligations of a Senator under this Code.

Material change

(4) A Senator shall report in writing any material change to the information relating to the confidential disclosure statement to the Senate Ethics Officer within 60 days after the change.

Meeting with Senate Ethics Officer

29. (1) After reviewing a Senator's confidential disclosure statement, the Senate Ethics Officer may request to meet with the Senator to discuss the statement and the Senator's obligations under this Code.

Necessary meeting

(2) If, pursuant to a request made under subsection (1), the Senate Ethics Officer advises the Senator that the meeting is necessary in order for the Senate Ethics Officer to carry out his or her duties and functions under the Code, the Senator shall meet with the Senate Ethics Officer.

Public disclosure summary

30. The Senate Ethics Officer shall prepare a public disclosure summary based on each Senator's confidential disclosure statement and submit it to the Senator for review.

Contents of public disclosure summary

31. (1) The public disclosure summary shall list

(*a*) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;

(*b*) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;

(*c*) the source and nature but not the amount of any income that the Senator has received in the preceding 12 months and is likely to receive in the next 12 months that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;

(*d*) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has, directly or through a subcontract, including the Senate Ethics Officer's written opinion authorizing them;

(*e*) the source and nature but not the value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries, including the Senate Ethics Officer's written opinion authorizing them;

(*f*) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;

(*g*) information regarding the nature but not the value of any assets and liabilities that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;

(*h*) any declarations of a private interest under section 12, unless the Senator has since retracted the declaration;

(*i*) any statements filed under sections 17 and 18 in relation to gifts and sponsored travel; and

(*j*) any statements of material change that pertain to the contents of this summary.

Discretion

(2) The Senate Ethics Officer need not include in the public disclosure summary information that he or she determines should not be disclosed because

(*a*) the information is not relevant to the purposes of this Code or is inconsequential, or

(*b*) a departure from the general principle of public disclosure is justified in the circumstances.

Disagreement

32. In cases of disagreement between a Senator and the Senate Ethics Officer regarding the contents of the public disclosure summary, the Senate Ethics Officer shall refer the disputed matter to the Committee for decision.

Public inspection

33. (1) Each public disclosure summary is to be placed on file at the office of the Senate Ethics Officer and made available for public inspection.

Removal of file from registry

(2) A public disclosure file shall be removed from the public registry at the time that the Senator concerned ceases to be a Senator.

Evasion

34. A Senator shall not take any action that has as its purpose the evasion of the Senator's obligations under this Code.

COMMITTEE

Designation or establishment

35. (1) At the beginning of each session, a Committee of the Senate shall be designated or established for the purposes of this Code.

Membership

(2) The Committee shall be composed of five members, three of whom shall constitute a quorum.

No *ex officio* members

(3) The Committee shall have no *ex officio* members.

Election of members

(4) Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

Presentation and adoption of motion

(5) The Leader of the Government in the Senate, seconded by the Leader of the Opposition in the Senate, shall present a motion on the full membership of the Committee to the Senate, which motion shall be deemed adopted without any debate or vote.

Chair

(6) The Chair of the Committee shall be elected by four or more members.

Removal

(7) A member is deemed removed from the Committee as of the time that

(*a*) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or

(*b*) the Senator becomes the subject of an inquiry under the Code.

Substitutions

(8) Where a vacancy occurs in the membership of the Committee, the replacement member shall be elected by the same method as the former member being replaced.

Meetings *in camera*

36. (1) Subject to subsection (2), meetings of the Committee shall be held *in camera.*

Meetings in public

(2) At the request of a Senator who is the subject of an investigation, the Committee may hold meetings at which the investigation is being conducted in public.

Attendance

(3) Subject to subsection (4), the Committee may limit attendance at its meetings.

Affected Senator

(4) The Committee shall give notice to a Senator who is the subject of an investigation of all meetings at which the investigation is being conducted, and shall admit the Senator to those meetings, but the Committee may exclude that Senator from those meetings or portions of meetings at which the Committee is considering a draft agenda or a draft report.

Withdrawal

(5) A member of the Committee who is the subject of a matter being considered by the Committee relating to that specific Senator shall withdraw from the Committee during its deliberations.

Jurisdiction

37. (1) Subject to subsection 41(2) and to the general jurisdiction of the Senate, the Committee is responsible for all matters relating to this Code, including all forms involving Senators that are used in its administration.

General directives

(2) The Committee may, after consultation with the Senate Ethics Officer, give general directives to the Senate Ethics Officer concerning the interpretation, application and administration of the Code, but not concerning its interpretation and application as it relates to an individual Senator's particular circumstances.

INTERSESSIONAL AUTHORITY

Intersessional Authority created

38. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Senate Intersessional Authority on Conflict of Interest for Senators.

Composition

39. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

General authority

40. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

Additional functions

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

SENATE ETHICS OFFICER

Senate Ethics Officer

41. (1) The Senate Ethics Officer is an independent officer who performs the duties and functions assigned by the Senate under this Code.

Independent status

(2) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Committee, but is independent in interpreting and applying this Code as it relates to an individual Senator's particular circumstances.

OPINIONS AND ADVICE

Request for opinion

42. (1) In response to a request in writing from a Senator on any matter respecting the Senator's obligations under this Code, the Senate Ethics Officer shall provide the Senator with a written opinion containing any recommendations that the Senate Ethics Officer considers appropriate.

Opinion binding

(2) An opinion given by the Senate Ethics Officer to a Senator is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the opinion as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Written advice binding

(3) Any written advice given by the Senate Ethics Officer to a Senator on any matter relating to this Code is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the advice as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Confidentiality

(4) A written opinion or advice is confidential and may be made public only by the Senator or with his or her written consent.

Proof of compliance

(5) A written opinion or advice given by the Senate Ethics Officer to a Senator under this section and relied upon by that Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Publication

(6) Nothing in this section prevents the Senate Ethics Officer, subject to the approval of the Committee, from publishing opinions and advice for the guidance of Senators, provided that no details are included that could identify a Senator.

Guidelines

43. Subject to the approval of the Committee, the Senate Ethics Officer may publish guidelines for the assistance of Senators on any matter concerning the interpretation of this Code that the Senate Ethics Officer considers advisable.

INQUIRIES AND INVESTIGATIONS

Direction by the Committee

44. (1) The Committee may direct the Senate Ethics Officer to conduct an inquiry to determine whether a Senator has complied with his or her obligations under this Code.

Request for an inquiry

(2) A Senator who has reasonable grounds to believe that another Senator has not complied with his or her obligations under this Code may request that the Senate Ethics Officer conduct an inquiry into the matter.

Form of request

(3) The request shall be in writing, shall be signed by the requesting Senator, shall identify the alleged non- compliance with this Code and shall set out the reasonable grounds for the belief that the Code has not been complied with.

Request to be sent

(4) The Senate Ethics Officer shall forward the request for an inquiry to the Senator who is the subject of the request and afford the Senator a reasonable opportunity to respond.

Preliminary review

(5) After a preliminary review to determine whether or not an inquiry is warranted, the Senate Ethics Officer shall notify both the requesting Senator and the Senator who is the subject of the request of his or her decision.

If inquiry warranted

(6) If the Senate Ethics Officer's decision under subsection (5) is that an inquiry is warranted, the Senate Ethics Officer shall so inform the Committee.

Receipt of information

(7) If, after receiving significant evidence, the Senate Ethics Officer believes that an inquiry may be warranted to determine whether a Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall provide the Senator written notice of his or her concerns and any documentation upon which those concerns are based, and shall afford the Senator a reasonable opportunity to address the issues.

Committee to approve

(8) Following the measures taken in subsection (7), if the Senate Ethics Officer has reasonable grounds to believe that an inquiry is warranted to determine whether the Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall request the Committee to approve the inquiry, and may proceed when approval has been received.

Notice

(9) Once approval to conduct an inquiry has been received under subsection (8), the Senate Ethics Officer shall provide the Senator concerned with his or her reasons for the opinion that an inquiry is warranted.

Respect for the inquiry process

(10) Once a request for an inquiry has been made, or direction or approval for an inquiry has been given, Senators should respect the process established by this Code.

Inquiry to be confidential

(11) The Senate Ethics Officer shall conduct a confidential inquiry as promptly as the circumstances permit, provided that at all appropriate stages throughout the inquiry the Senate Ethics Officer shall give the Senator a reasonable opportunity to be present and to make representations to the Senate Ethics Officer in writing or in person, by counsel or by any other representative.

Cooperation

(12) Senators shall cooperate without delay with the Senate Ethics Officer with respect to any inquiry.

Powers of Senate Ethics Officer

(13) In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers, things and records, which measures may be enforced by the Senate acting on the recommendation of the Committee following a request from the Senate Ethics Officer.

Report to the Committee

45. (1) Following an inquiry the Senate Ethics Officer shall report confidentially in writing to the Committee.

Contents of report

(2) The Senate Ethics Officer may make findings and recommendations, including

(*a*) that the complaint appears to be unfounded and should be dismissed;

(*b*) that the request for an inquiry was frivolous or vexatious or was not made in good faith, or that there were no grounds or insufficient grounds to warrant an inquiry or the continuation of an inquiry;

(c) that the complaint appears to be founded and that remedial action has been agreed to by the Senator involved; or

(*d*) that the complaint appears to be founded, but that no remedial action was available or agreed to by the Senator involved.

Bad faith

(3) Where the Senate Ethics Officer makes a finding that the complaint or request for an inquiry was frivolous or vexatious or was not made in good faith, he or she may recommend that action be considered against the person who made the complaint or request.

Mitigation

(4) If the Senate Ethics Officer concludes that a Senator has not complied with an obligation under this Code but that the Senator took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgement made in good faith, the Senate Ethics Officer shall so state in the report and may recommend that no sanction be imposed.

General recommendations

(5) The Senate Ethics Officer may include in the report any recommendations arising from the matter that concern the general interpretation of this Code.

Reasons

(6) The Senate Ethics Officer shall include in the report reasons and any supporting documentation for any findings and recommendations.

Consideration of report

46. (1) The Committee shall take into consideration a report received from the Senate Ethics Officer under section 45 as promptly as circumstances permit.

Due process

(2) The Committee shall provide, without delay, a copy of the report of the Senate Ethics Officer to the Senator who was the subject of the inquiry, and shall afford that Senator the opportunity to be heard by the Committee.

Investigation

(3) In considering a report, the Committee may

(*a*) conduct an investigation; or

(*b*) direct that the Senate Ethics Officer's inquiry be continued and refer the report back to the Senate Ethics Officer for such further information as the Committee specifies.

Committee report

(4) Subject to subsection (5), following its consideration under this section of a report of the Senate Ethics Officer, the Committee shall report to the Senate.

No report required

(5) Where the Committee finds that a complaint against a Senator was unfounded, the Committee is not required to report to the Senate unless the Senator concerned requests that it do so.

Contents of report

(6) In its report to the Senate, the Committee shall report the fact of the inquiry and give its findings with respect thereto, its recommendations if any, and its reasons and the supporting documentation for any findings or recommendations.

Remedial action

(7) The Committee may recommend that the Senator be ordered to take specific action or be sanctioned.

Anonymity

(8) Where the Committee finds that a complaint is unfounded and reports to the Senate, its report may, at the Senator's request, keep the Senator's name anonymous in order to protect the Senator's reputation.

Suspension of investigation or inquiry: Act of Parliament

47. (1) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry if

(*a*) there are reasonable grounds to believe that the Senator has committed an offence under an Act of Parliament in relation to the same subject matter, in which case the Committee or Senate Ethics Officer, subject to subsection (4), shall notify the proper authorities;

(*b*) it is discovered that

(i) the subject matter under investigation or inquiry is also the subject matter of an investigation to determine if an offence under an Act of Parliament has been committed, or

(ii) a charge has been laid with respect to that subject matter.

Investigation or inquiry continued

(2) If the Committee or the Senate Ethics Officer has suspended the investigation or inquiry, it may resume once the other investigation or charge regarding the same subject matter has been finally disposed of.

Suspension of investigation or inquiry: other laws

(3) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry and, subject to subsection (4), notify the proper authorities if there are reasonable grounds to believe that the Senator has committed an offence under the law of a Canadian province or territory in relation to the same subject matter, and may continue the investigation or inquiry when any actions arising from the notification have been completed.

Advice of Committee

(4) The Senate Ethics Officer shall seek the advice of the Committee before notifying the proper authorities.

Notice for motion to adopt

48. (1) A motion that the Senate adopt a report referred to in subsection 46(4) shall be put pursuant to the notice provisions of paragraph 58(1)(g) of the *Rules of the Senate*.

Motion

(2) A motion to adopt a report referred to in subsection 46(4) shall be deemed to have been moved on the fifth sitting day subsequent to the presentation of the report if the motion has not yet been moved.

Senator may speak

(3) After a motion to adopt a report has been moved, or has been deemed to have been moved, no vote may be held for at least five sitting days, or until the Senator who is the subject of the report has spoken to the motion for its adoption, whichever is the sooner.

Right to speak last

(4) The Senator who is the subject of the report may exercise the right of final reply.

Senate vote

(5) If a motion for the adoption of a report has not been put to a vote by the 15th sitting day after the motion was moved or deemed to have been moved, the Speaker shall immediately put all necessary questions to dispose of the matter when the item is called.

Referral back

(6) The Senate may refer any report back to the Committee for further consideration.

Suspension: former Senators

49. (1) An investigation or inquiry of a Senator who ceases to be a Senator is permanently suspended unless the Committee directs that the investigation or inquiry be completed.

Direction to continue

(2) In considering whether to issue a direction under subsection (1), the Committee shall consider any request from the former Senator or from the Senator who requested the inquiry, and any representations made by the Senate Ethics Officer.

Consideration of committee report

(3) Notwithstanding subsection 48(5), where a motion to adopt a report about a former Senator is moved or deemed to be moved, the motion shall not be put to a vote until the former Senator has been offered the opportunity to speak to the report as a witness in Committee of the Whole, and has either availed himself or herself of the opportunity or has refused or otherwise failed to take advantage of the offer.

PRIVACY AND CONFIDENTIALITY

Privacy to be minimally impaired

50. In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.

Confidentiality

51. (1) All information relating to the private interests of Senators and those of their family members received pursuant to this Code or created under it is to be kept confidential, except in accordance with this Code or as otherwise ordered by the Senate.

Inclusions

(2) For greater certainty, the requirement set out in subsection (1) applies to documents and information received in the course of an inquiry that the Senate Ethics Officer has suspended in accordance with paragraph 47(1)(a) or subsection 47(3) and to documents and information retained by the Senate Ethics Officer pursuant to section 52.

Confidentiality

(3) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following:

(*a*) a resolution by the Senate under subsection 20.2(1) of the *Parliament of Canada Act* requesting the Governor in Council to remove the Senate Ethics Officer from office;

(*b*) dismissal of any officers, employees, agents, advisers or consultants involved.

Retention of documents

52. (1) The Senate Ethics Officer shall retain all documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which, subject to subsections (2) to (4), the documents shall be destroyed.

Ongoing proceedings

(2) Where, at the time that a Senator ceases to be a Senator, there is an investigation or inquiry in progress concerning the Senator or a charge has been laid against the Senator, the destruction of documents that relate to the matter shall be postponed until 12 months after the day of the final disposition of all related proceedings.

Return of confidential documents

(3) At a Senator's request, confidential documents relating to a Senator may be returned to the Senator instead of being destroyed.

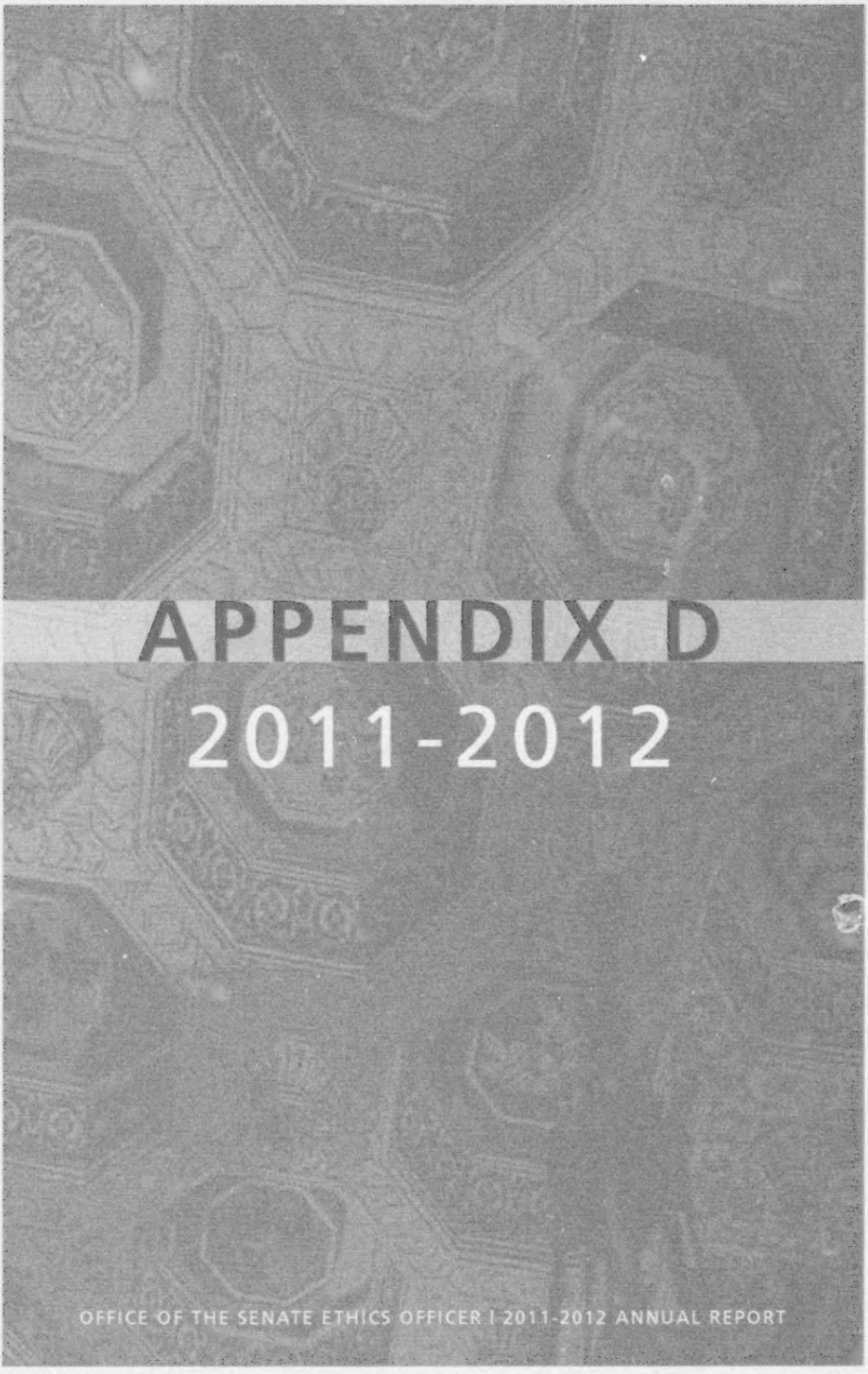
Archiving of public documents

(4) Public documents relating to a Senator shall be forwarded to the Senate archives.

PERIODIC REVIEW

Committee review

53. The Committee shall undertake a comprehensive review of this Code and its provisions and operation once every five years, and shall submit a report to the Senate thereon, including a statement of any changes the Committee recommends.


APPENDIX D
2011-2012

OFFICE OF THE SENATE ETHICS OFFICER

OPINION REGARDING SENATOR WALLIN

PURSUANT TO SUBSECTION 42(1)
OF THE
CONFLICT OF INTEREST CODE FOR SENATORS

JEAN T. FOURNIER
SENATE ETHICS OFFICER

OTTAWA, ONTARIO
September 27, 2011

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1. REQUEST FOR AN OPINION

The Honourable Pamela Wallin, a member of the Senate of Canada, requested that I provide her with a written opinion, pursuant to subsection 42(1) of the *Conflict Interest Code for Senators* (the Code), respecting certain allegations raised in media reports, including social media, concerning the Senator's obligations under the Code in connection with Bill C-311, the *Climate Change Accountability Act*. In particular, it was alleged that, by voting at Second Reading on the Bill, she acted in a manner to further her own private interests and those of Oilsands Quest Inc., a company on whose board she sits. It was also alleged that she was required to declare her private interest in Oilsands Quest Inc. when the Bill was being debated in the Senate and then to recuse herself from voting on the measure.

Subsection 42(1) of the Code reads as follows:

> **42.**(1) In response to a request in writing from a Senator on any matter respecting the Senator's obligations under this Code, the Senate Ethics Officer shall provide the Senator with a written opinion containing any recommendations that the Senate Ethics Officer considers appropriate.

Senator Wallin's request for an opinion was made on July 20, 2011 and subsequently confirmed in writing. A written opinion under the above-noted provision is confidential and may only be made public by the Senator or with his or her written consent. Senator Wallin has advised that she intends to make this opinion public.

This matter engages the following provisions of the Code: section 8, which prohibits Senators from acting in any way to further their own private interests, their family members' private interests, or to improperly further another person's or entity's private interests, while they are engaged in their parliamentary duties and functions -- the phrase "furthering private interests" being defined in section 11 of the Code; subsection 12(1), which requires a Senator who has a private interest in a matter before the Senate or a committee of the Senate of which he or she is a member to make a declaration of this interest in the Senate or in the committee, as the case may be; and section 14, which prohibits Senators from voting where they have made or were required to make such a declaration. These sections of the Code are virtually identical to the corresponding provisions found in the *Conflict of Interest Code for Members of the House of Commons*.

2. RELEVANT PROVISIONS OF THE CODE

The relevant provisions of the Code are as follows:

Carrying on activities

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

(*a*) engaging in employment or in the practice of a profession;
(*b*) carrying on a business;
(*c*) being a director or officer in a corporation, association, trade union or not-for-profit organization; and
(*d*) being a partner in a partnership.

Furthering private interests

8. When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Clarification: furthering private interests

11.(1) In sections 8 to 10, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:

(*a*) an increase in, or the preservation of, the value of the person's or entity's assets;
(*b*) the elimination, or reduction in the amount, of the person's or entity's liabilities;
(*c*) the acquisition of a financial interest by the person or entity;
(*d*) an increase in the person's or entity's income from a contract, a business or a profession;
(e) an increase in the person's income from employment;
(*f*) the person becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or
(*g*) the person becoming a partner in a partnership.

Clarification: not furthering private interests

(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

(a) is of general application;
(b) affects the Senator or the other person or entity as one of a broad class of the public; or
(c) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

Declaration of a private interest: Senate or committee

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on the first occasion at which the Senator is present during consideration of the matter, make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the Clerk of the committee, as the case may be. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

Prohibition on voting

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Clarification: having a private interest

16. For the purpose of sections 12 to 14, private interest means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

3. FACTS

Senator Wallin's Appointment to the Senate

On December 22, 2008, the Prime Minister, the Right Honourable Stephen Harper, announced the appointment of Senator Wallin to the Senate. The Senator was officially appointed on January 2, 2009 and was sworn in on January 26, 2009.

Senator Wallin is currently Chair of the Standing Senate Committee on National Security and Defence. She also serves on the Subcommittee on Veterans Affairs and the Standing Senate Committee on Foreign Affairs and International Trade. Finally, she has also been a past member of the Special Senate Committee on Anti-terrorism.

Senator Wallin was already a member of the board of directors of Oilsands Quest Inc. at the time of her appointment to the Senate. She was appointed to the board on June 28, 2007, 18 months prior to her appointment to the Senate.

Background on Oilsand Quest Inc.[1]

Incorporated in 1998, Oilsands Quest Inc. is a U.S. public company, with its head office in Calgary, Alberta, engaged in the exploration of oil sands located in Saskatchewan and Alberta. Oilsands Quest Inc., operating through its Canadian subsidiary corporations, is an exploration company, not an oil sands producer, and does not currently have any income from operating activities. The primary focus of the company's exploration program is on well drilling, seismic, environmental, engineering, construction and other activities, with test sites on the Company's Saskatchewan and Alberta permits. It is a relatively small company with 17 employees as of April 30, 2011.

Senator Wallin is a member of the company's Governance and Nominating Committee and of its Community Relations, Environment, Health and Safety Committee. Like other directors, she receives directors' fees, owns shares of common stock and stock options. According to information filed by the company with the United States Security and Exchange Commission, Senator Wallin's shares in the company in July 2011 represented far less than 1% of the issued shares.

Bill C-311, the *Climate Change Accountability Act*

Bill C-311 (the Bill), a private member's bill, was first introduced in the House of Commons by a member of the New Democratic Party on February 10, 2009 and was reinstated in the next parliamentary session on March 3, 2010. It was adopted in the House on May 5, 2010 by a vote of 149 to 136. The Bill was then introduced in the Senate on May 6, 2010 and was defeated at Second Reading on November 16, 2010 by a vote of 43 to 32. Conservative Senators voted against the Bill while Liberal Senators voted in favour.

According to the summary of the Bill, its purpose is:

> ...to ensure that Canada meets its global climate change obligations under the United Nations Framework Convention on Climate Change by committing to a long-term target to reduce Canadian greenhouse gas emissions to a level that is 80% below the 1990 level by the year 2050, and by establishing interim targets for the period 2015 to 2045. It creates an obligation on the Commissioner of the Environment and Sustainable Development to review proposed measures to meet the targets and submit a report to Parliament. It also sets out the duties of the National Round Table on the Environment and the Economy.

The preamble to the Bill recognizes that climate change is an urgent problem for Canada and requires government action. It states that, according to scientific research, the reduction of greenhouse gases emissions is required in order to prevent the global average temperature

[1] The information in this section is based on Oilsands Quest Inc.'s Annual Report for the year ended April 30, 2011 and other disclosures to the United States Securities and Exchange Commission.

from rising. Finally, it states that the intent of the legislation is to ensure that Canada reduces its emissions to an extent similar to that required by all industrialized countries in order to prevent dangerous climate change.

Section 5 of the Bill establishes targets and timelines to reduce Canadian greenhouse gas emissions: a long-term target that is 80% below the 1990 level by the year 2050 and a medium-term target that is 25% below the 1990 level by the year 2020. The proposed targets are ambitious, comprehensive and on a scale of national significance, with explicit measures for accountability and oversight. Section 6 of the Bill provides the Minister of the Environment with six months to table an interim plan with targets for every five years. That plan is required to be reviewed at least once every five years. Section 10 provides that the Minister would have to report annually to Parliament on the measures taken by the Government of Canada to ensure that its commitment and the targets set out under the target plan are being met, as well as to report on the level of Canadian greenhouse gas emission reductions that are reasonably expected to result from each of those measures in each of the next 10 years.

The regulation-making authority under the Bill is very broad, potentially affecting every region of the country and every sector of the economy. Under section 7, the Governor in Council may make regulations:

(a) limiting the amount of greenhouse gases that may be released into the environment;
(b) limiting the amount of greenhouse gases that may be released in each province;
(c) establishing performance standards designed to limit greenhouse gas emissions;
(d) pertaining to the use or production of any equipment, technology, fuel, vehicle or process in order to limit greenhouse gas emissions;
(e) respecting permits or approvals of the release of any greenhouse gas;
(f) regarding trading in greenhouse gas emission reductions, removals, permits, credits, or other units;
(g) pertaining to monitoring, inspections, investigations, reporting, enforcement, penalties or other matters to promote compliance with the regulations made under the Act;
(h) designating the contravention of a provision or class of provisions of the regulations as an offence punishable by indictment or on summary conviction and prescribing a fine and imprisonment for the offence; and,
(i) relating to any other matter that is necessary to carry out the purpose of the Act.

Annual Disclosure Requirements under the Code[2]

[2] The annual disclosure requirements under the Code are separate and distinct from the requirement to make declarations of private interests in the Senate and in committees of the Senate. The disclosure process involves confidential disclosure, on an annual basis, by Senators to the Senate Ethics Officer of their financial interests, as well as the public disclosure of summaries of these various interests. The public information is filed in a public registry, which is regularly updated, and which may be consulted by the public at any time during the year. By contrast, a declaration of a private interest is made by a Senator in the Senate or in a committee of the Senate whenever a matter is being examined that may affect a private interest of the Senator, or of a family member.

As noted earlier, Senator Wallin was officially appointed to the Senate on January 2, 2009. On January 5, 2009, I wrote to Senator Wallin to provide her with a copy of the confidential disclosure statement, a form which must be completed by each newly summoned Senator within 120 days after being summoned, as well as information about the Code and my Office. The annual disclosure process under the Code is a rigorous one involving detailed forms to be filed, the exchange of documents between my Office and individual Senators, and face-to-face meetings with Senators. Senators are required to disclose sources of income, assets, liabilities, outside activities, sponsored travel, gifts and any federal Government contracts, in accordance with the relevant provisions of the Code.

Senator Wallin completed her confidential disclosure statement on January 28, 2009 and sent it to my Office the next day. In accordance with paragraphs 28(1)(*a*) and (*b*) of the Code, the Senator indicated that she was an independent director of Oilsands Quest Inc. and that she held other official positions with a number of for-profit and not-for-profit organizations.

Based on this information, I prepared a letter of advice to the Senator, dated February 19, 2009, regarding her particular obligations under the Code and recommended measures to ensure that she was in compliance with the Code. Similar letters of advice are sent to all Senators as part of the annual disclosure process in order to provide guidance to them concerning their obligations under the Code and, in particular, to address the provisions that are directly relevant to them in light of the information that they have disclosed.

My letter of advice to Senator Wallin referred to section 5 of the Code, which provides that Senators who are not ministers of the Crown may participate in any outside activities, including sitting on boards or holding office in corporations, partnerships or other entities, provided that they are able to fulfil their obligations under the Code. The letter also noted that the first obligation of Senators is to serve the public interest and where their private interests come in conflict, or appear to come in conflict with the public interest, they are to resolve the matter in favour of the public interest (paragraph 2(1)(*c*)). The letter also draws attention to several provisions of the Code that highlight the importance of ensuring that the public interest always prevails over private interests (section 8 - furthering private interests, section 9 - use of influence, and section 10 - use of insider information). These provisions are aimed at ensuring that Senators will not act or attempt to act in a manner that would be beneficial to them or to

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The main purpose of the public registry of information is to give public notification, on a continuing basis, of those interests held by Senators that might, at some point, be thought to have a general influence upon their parliamentary conduct or actions. The main purpose of declarations of private interests is to ensure that fellow Senators, other members of Parliament, Ministers, officials and the public are made aware at the point at which a Senator is actually faced with a matter before the Senate or in a Senate committee in which he or she reasonably believes that a private interest he or she has might be affected by that matter. A Senator who is in this situation is then required to recuse himself or herself from any deliberations on the measure, including the vote.

their family members or that would improperly benefit another person or entity in any manner listed under subsection 11(1) of the Code.

In accordance with section 30 of the Code, I prepared a public disclosure summary, dated January 28, 2009. The summary stated that Senator Wallin was a member of the board of directors of Oilsands Quest Inc., as well as a member of the board of directors of several other corporations and not-for-profit organizations.

I met Senator Wallin in March 2009, at which time I had the opportunity to discuss her disclosure statement, my letter of advice to her, as well as her public disclosure summary. Senator Wallin signed her public disclosure summary on that day and a certified copy was placed in the Office's Public Registry, in accordance with subsection 33(1) of the Code, on March 25, 2009. I concluded that she was in compliance with the requirements of the Code and advised her accordingly. I also met Senator Wallin in January 2010 and in November 2010 as part of the annual disclosure process and was of the view that she fulfilled her obligations under the Code.[3]

Activities Outside Official Parliamentary Duties

A number of Senators and Members of the House of Commons are engaged in a wide range of activities outside their official parliamentary duties. Both the conflict of interest code applicable to Senators (section 5 of the Code) and that applicable to Members of the House of Commons (section 7 of the *Conflict of Interest Code for Members of the House of Commons*) authorize private members to engage in outside activities **provided they are able to comply with the provisions of the Code applicable to them.** In fact, these sections in the Senate and House codes are virtually identical. (The rules that apply to Cabinet ministers are much more restrictive, reflecting the fact that they have considerable executive powers.)

A clear statement on the matter of Canadian parliamentarians engaged in activities outside their official duties was made in 1992 by a special joint committee of the Senate and of the House of Commons, the Special Joint Committee on Conflict of Interest (the Blenkarn-Stanbury Report):

> The Canadian tradition has seen a mix of politicians who have given up outside activities for their parliamentary activities and "citizen politicians", citizens who entered politics after pursuing active business or professional lives, and who retain those businesses during their tenure in public life. We believe this mix enhances the quality of Parliament as a whole, contributing to an expression of diverse views and the representation of a broad range of interests.
>
> Committee members recognize that it is not necessarily wrong or improper for a conflict between a Member's public duties and private interests to arise. To

[3] For a more detailed description of the annual disclosure process in the Senate, please refer to Appendix E of the Senate Ethics Officer's Annual report 2010-2011, pages 84-86.

say otherwise would be to demand that all Members sever all ties with their former lives. Not only do we believe such a demand would work excessive hardship (and dissuade talented and capable individuals from public life), but we believe it is unnecessary. What is important is to ensure that any conflict that could arise is and is seen to be always resolved in the public interest.

Senators who sit on boards of directors of not-for-profit and for-profit organizations are required to disclose the positions they hold to the Senate Ethics Officer and I then make this information available to the public (see paragraphs 31(1)(*a*) and (*b*)). Moreover, Senators must ensure that they arrange their affairs to prevent their private interests from coming in conflict, or appearing to come in conflict, with the public interest. As noted earlier, a number of sections of the Code highlight the importance of ensuring that the public interest always prevails over private interests (paragraph 2(1)(*c*) and sections 8, 9 and 10).

The conflict of interest laws and rules in other Canadian jurisdictions also permit members of legislative assemblies to engage in certain activities outside their official duties and functions. Permitting legislators to maintain some involvement in these activities is also a recognized practice in many countries, including the United States, the United Kingdom, Australia and France. The general view, in Canada and elsewhere, is that outside activities enable legislators to become more knowledgeable and experienced in certain areas of public policy which, in turn, assists them in carrying out their duties and functions as lawmakers.[4]

4. SENATOR WALLIN'S POSITION

Both in my meeting with Senator Wallin on August 17, 2011, as well as in a letter to me dated August 31, 2011, Senator Wallin stated that she believed that the Bill was of general application and broad effect.

She stated that, having examined the Bill, she did not believe that she would be in a conflict of interest if she participated in the vote at Second Reading since the Bill did not affect Oilsands Quest Inc. as an exploration company specifically, or oil sands companies as a class, or even the energy sector as a broader class.

She noted that the Bill did not target, or even mention, any particular sector of the economy, instead setting out overall national targets for the reduction of greenhouse gas emissions. She also indicated that, if the Bill had passed, it would have been up to the Government of Canada to decide what regulations to bring in to meet the steep reduction targets set out under the Bill. And, given these steep targets, she argued that all sectors of the economy would have been affected, particularly since all Canadian citizens, all businesses in Canada, and the entire public sector contribute to greenhouse gas emissions.

[4] For a more detailed account of the restrictions and compliance measures involving outside activities which Senators are required to follow in order to comply with their obligations under the Code, please refer to my Annual Report 2006-2007, pages 25-28.

In her view, the suggestion that regulations promulgated under the Bill might have targeted the energy sector, and oil sands companies in particular, to the detriment of Oilsands Quest Inc. and her own personal interests, is entirely speculative, again, given a plain reading of the Bill, the provisions of which do not target any one sector of the economy, and given the steep reduction goals that are required to be met thereunder.

Senator Wallin also explained that she believed that, given the Bill's broad application, not only did she have a right to vote on the measure, but that it was her responsibility as a member of the Senate to do so. She stated that, in her view, the Bill would have been detrimental to the Canadian economy as a whole and that the approach of the Government of Canada in reducing greenhouse gas emissions was far more responsible than the approach taken under the Bill. She stated that when she voted, she was motivated, not by her own personal interests, but rather by a sense of duty and responsibility as a legislator and a member of the Senate.

Finally, the Senator also confirmed that at no point in time did she discuss this measure with the board of directors of Oilsands Quest Inc., nor did any of the individual board members ever raise the matter with her.

5. ANALYSIS

(a) Allegations

As noted earlier, the allegations raised in media reports suggest that Senator Wallin furthered her own private interests, as well as those of Oilsands Quest Inc., when she participated in the vote in the Senate on the Bill. As such, questions were raised about whether she should have recused herself from the vote.

The provisions of the Code that pertain specifically to these allegations are as follows: section 8, subsection 12(1) and section 14.

(b) Section 8 – Furthering Private Interests

Section 8 of the Code reads:

> **8.** When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests.

This provision raises three issues on these particular facts:

(1) Was the Senator engaged in her parliamentary duties and functions when she voted at Second Reading in the Senate on the Bill?

(2) Does the Senator have a 'private interest' in Oilsands Quest Inc.?
(3) Did the Senator further her own private interest and/or those of Oilsands Quest Inc., within the meaning of section 11 of the Code, when she voted on the Bill?

First, there can be no doubt that Senator Wallin was performing her parliamentary duties and functions when she voted in the Senate on the Bill.

Second, the Senator clearly has a 'private interest' in Oilsands Quest Inc. As noted earlier, she is a member of the board of directors and, as a member of the board, she has an interest in the affairs of the company. Moreover, like other directors, she receives directors' fees, owns shares (although her interest in this respect is minimal, i.e., far less than 1% of the value of the issued capital stock), and she holds stock options.

The remaining issue is whether, in participating in the vote on the Bill, the Senator furthered her own private interests and/or those of Oilsands Quest Inc. within the meaning of section 11 of the Code. If I find that she furthered Oilsands Quest Inc.'s private interests, I would also have to determine whether the furthering of such interests was 'improper' within the meaning of section 8 of the Code.

The phrase 'furthering private interests' is defined in subsection 11(1); it is exhaustive in nature. For the purposes of this definition, subsection 11(2) of the Code clarifies situations in which a Senator is not considered to have furthered his or her own private interests or those of another person or entity. These are, in effect, exceptions to the list of activities in subsection 11(1).

Under subsection 11(1), the Senator would have furthered her own private interests, or those of Oilsands Quest Inc., if she took any action for the purpose of achieving, directly or indirectly, any of the following:

(a) an increase in, or the preservation of, the value of the Senator's or the company's assets;
(b) the elimination, or reduction in the amount, of the Senator's or the company's liabilities;
(c) the acquisition of a financial interest by the Senator or the company;
(d) an increase in the Senator's or company's income from a contract, a business or a profession;
(e) an increase in the Senator's income from employment;
(f) the Senator becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or
(g) the Senator becoming a partner in a partnership.

Subsection 11(2) provides as follows:

11.(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

(a) is of general application;
(*b*) affects the Senator or the other person or entity as one of a broad class of the public; or
(*c*) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or a Senate committee.

The exceptions in paragraphs 11(2)(*a*) and (*b*) are found in virtually all conflict of interest regimes for legislators in Canada. More specifically, the conflict of interest laws applicable to legislators in Alberta,[5] British Columbia,[6] New Brunswick[7], Newfoundland and Labrador,[8] Nova Scotia,[9] Nunavut,[10] Prince Edward Island,[11] Ontario,[12] and Saskatchewan[13] all contain both of the above-mentioned exceptions. The *Conflict of Interest Code for Members of the House of Commons* also contains both exceptions.[14] The legislation in the Northwest Territories contains the broad class exception.[15] The legislation in Manitoba defines 'direct pecuniary interest' and 'indirect pecuniary interest' and an exception to these definitions is provided for 'common interests'.[16] In Quebec, a member is not required to declare a private interest in a matter before the National Assembly or a committee of which he or she is a member if it is a financial interest shared by other Members or by the general public.[17]

These exceptions have also been included in the federal *Conflict of Interest Act* (the Act),[18] which applies to public office holders. Subsection 2(1) of the Act defines 'private interest' by what it is not, as is the case in most Canadian jurisdictions. Both the general application and the broad class exceptions are included within the definition.

Clearly, the Senate conflict of interest regime is in no way unique with respect to its approach in this area.

Professor Levine, from York University, who has written extensively in the area of government ethics laws, explains the reason for these exceptions in his book *The Law of Government Ethics*. He writes[19]:

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[5] *Conflicts of Interest Act*, RSA 2000, c C-23, para 1(1)(*g*).
[6] *Members' Conflict of Interest Act*, RSBC 1996, c 287, s 1.
[7] *Members' Conflict of Interest Act*, SNB 1999, c M-7.01, s 1.
[8] *House of Assembly Act*, RSNL 1990, c H-10, s 25.
[9] *Conflicts of Interest Act*, SNS 2010, c 35, para 3(*l*).
[10] *Integrity Act*, SNu 2001, c 7, ss 3(1).
[11] *Conflicts of Interest Act*, RSPEI, 1988, c Q-1, para 1(*g*).
[12] Members' Integrity Act, 1994, SO 1994, c 38, s 1.
[13] *Members' Conflict of Interest Act*, SS 1998, c M-11.11, para (1)(*h*).
[14] *Conflict of Interest Code for Members of the House of Commons*, paragraphs 3(3)(a) and (b).
[15] *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22, para 74(2)(a).
[16] *The Legislative Assembly and Executive Council Conflict of Interest Act*, CCSM c L112, ss 1(1), 3(1) and 3(3).
[17] *Code of Ethics and Conduct of the Members of the National Assembly*, RSQ, c C-23.1, s 25.
[18] SC 2006, c 9.
[19] Gregory J. Levine, *The Law of Government Ethics* (Ontario: The Cartwright Group Ltd, 2007), at 18.

> This approach of excluding what are essentially interests held in common with others is a typical approach to this kind of legislation. It acknowledges that legislators and decision-makers are in and of the community, and so long as they are not focused on their own interests may deal with matters which affect their own interests in a general way.

Professor Dennis F. Thompson, the founding Director of Harvard University's ethics program (now the Edmond J. Safra Foundation Centre for Ethics) and recognized for his pioneering work in the field of political ethics, makes the following point, in his classic book entitled *Ethics in Congress: From Individual to Institutional Corruption*: "A conflict of interest exists only when a member would personally benefit from some piece of legislation in a way and to the extent that other people would not."[20]

These exceptions are also found in other conflict of interest regimes outside of Canada. For example, the code of conduct for US Senators includes these exceptions to the rule that prohibits individuals from using their legislative power to advance their personal financial interests.[21]

Turning now to the case at hand, if the Bill is of general application, then this matter would fall under the exception in paragraph 11(2)(*a*) of the Code.

If, on the other hand, the passing of the Bill would have affected Oilsands Quest Inc. and the Senator's interest in the company as one of a 'broad class', this matter would fall under the exception in paragraph 11(2)(*b*). The concept of "broad class" is not defined in the Code (nor is it defined in the conflict of interest rules and laws in other Canadian jurisdictions). As such, the term should be given its plain, ordinary meaning. 'Broad' is generally defined as "large in area or scope".[22]

As already noted above, the Bill sets national targets for reducing greenhouse gas emissions, although it does not outline the means by which such targets are to be met. How such targets would have been met, which industries would have been regulated, and to what extent they would have been regulated, would have depended on the regulatory scheme put in place by the Governor in Council under section 7 of the Bill. In other words, the regulations would have provided the method by which the targets under the Bill were to be achieved.

In the absence of any regulations, the Bill, on its face, is comprehensive and appears to address all industries that contribute to greenhouse gas emissions. It does not target any particular industry or sector of the economy.

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[20] Dennis F. Thompson, Ethics in Congress: *From Individual to Institutional Corruption* (Washington, DC: Brookings Institute Press, 1995), at 56.

[21] *The Senate Code of Official Conduct, Select Committee on Ethics*, United States Senate, rule 37, para 4.

[22] *Concise Oxford English Dictionary*, 11ed (Oxford: Oxford University Press, 2004).

According to information provided by Environment Canada on climate change,[23] there are a number of sectors of the economy that account for greenhouse gas emissions in Canada: the transportation industry, which accounts for 22% of emissions; the fossil fuel industry also accounting for 22%; electric utilities at 16%; the heavy industry and manufacturing sector at 15%; the service industries at 8%; residential at 7%; and agriculture at 10%.

As such, on its face, the Bill would have affected companies in any of the industries that are recognized as contributing to greenhouse gas emissions. This is certainly a large enough class to be considered a 'broad class' within the meaning of paragraph 11(2)(*b*) of the Code.

While it is also possible to argue that the passing of the Bill would have affected all Canadians on some level (as opposed to only a broad class of the public), in my view, the general application exception in paragraph 11(2)(*a*) is intended to address those measures that could potentially affect each and every Canadian in a relatively similar way, for example, a bill that increases or reduces the GST. As already noted above, the Bill would more likely have targeted, through regulations, the sectors of the economy that contribute the most to greenhouse gas emissions. In other words, its impact would have been greater on some than on others. It is not likely that it would have affected individual Canadians in the same way as it would have affected companies involved in activities that largely contribute to greenhouse gas emissions.

Moreover, it is not likely that any regulatory scheme adopted by the Governor in Council would have targeted one or two industries exclusively, with the result that the class of emitters affected by the Bill would have been narrowed. In this respect, it may be interesting to note that the Environment Minister has publicly stated that the Government is taking a sector-by-sector approach to regulating greenhouse gas emissions beginning with the transportation sector, which he referred to as 'the leading sector'.[24] As such, the Government's approach to greenhouse gas emissions to date has been to address emitters sector-by-sector. Based on this approach, it is likely that any regulations under the Bill would have targeted all significant emitters at some point.

Furthermore, the Bill's ambitious reduction goals could not have been met if only one or two industries responsible for greenhouse gas emissions had been targeted by regulation. In order to achieve the reduction goals set out in the Bill, most, if not all, industries would have had to have been affected at some point to a greater or lesser extent.

In light of the above, in my view, the exception in paragraph 11(2)(*b*) of the Code applies and disposes of the matter with respect to section 8.

(c) Sections 12 and 14 – Declarations of Private Interests and Voting

[23] Environment Canada, online: http://www.climatechange.gc.ca/default.asp?lang=En&n=72A588AB-1.
[24] Jessica Bruno, "Kent Estimates Canada is 'a quarter of way' to Meeting 2020 GHG Emissions Targets", *The Hill Times*, 20 June 2011.

I now turn to sections 12 and 14 of the Code. The relevant portion of subsection 12(1) is as follows:

> **12.**(1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on the first occasion at which the Senator is present during consideration of the matter, make a declaration regarding the general nature of the private interest....

Section 14 of the Code is related to subsection 12(1). It reads:

> **14.** A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Section 16 of the Code is helpful in understanding the above-noted provisions. It states that, for the purposes of sections 12 to 14, 'private interest' means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

As such, under the Code, the term "private interest" means assets, liabilities, financial interests, income from contracts, businesses or professions, income from employment, and official positions in partnerships, corporations, associations, trade unions and not-for-profit organizations.

As already noted earlier in the analysis under section 8, Senator Wallin clearly had a 'private interest' in Oilsands Quest Inc. Under subsection 12(1), the remaining issue is whether Senator Wallin had reasonable grounds to believe that her private interest in Oilsands Quest Inc. might have been affected by the Bill, thus requiring her: (a) to make a declaration of a private interest in the Senate in accordance with the procedure set out under subsection 12(1); and (b) to recuse herself from the vote at Second Reading in accordance with section 14, unless the matter fell within an exception under subsection 11(2) of the Code.

Unlike section 8 of the Code, subsection 12(1) requires a belief by the Senator on reasonable grounds that her private interest might be affected by the measure in question. In other words, unlike section 8, which requires that the Senator further the company's private interests or her own, section 12 only requires that she believe, on reasonable grounds, that the Bill might have affected the company's interest or her own interest in the company. The exceptions in subsection 11(2) of the Code would factor into the Senator's decision as to whether to declare the interest and so refrain from voting, or not.

In the course of my meeting with Senator Wallin, and as noted earlier, she indicated that, having examined the Bill, she was of the view that it was of general application and of broad effect and, therefore, she believed that she would not be in a conflict of interest if she participated in the vote on the Bill. She stated that all Canadians, all businesses in Canada, and

the entire public sector contribute to greenhouse gas emissions. She noted that, given the Bill's steep reduction goals and that it did not target or even mention any particular sector, everyone would have been affected by the Bill had it become law. She stated that if the Bill would have affected the oil sands industry alone, she would have been concerned about a potential conflict and would have sought my advice about whether to participate in the vote. She also added that any suggestion that regulations promulgated under the Bill might have targeted the energy sector exclusively, and oil sands companies in particular, to the detriment of Oilsands Quest Inc. and her personal interests, is entirely speculative in the absence of any regulations. She also noted that the company is only an exploration company. In addition, she stated that she believed it was her duty and responsibility as a member of the Senate to participate in the vote, particularly since she was of the view that the Bill would cause serious harm to the Canadian economy.

In my opinion, and as already outlined above, the matter properly falls under the exception in paragraph 11(2)(*b*). As such, the Senator's belief that she did not have to make a declaration of a private interest under subsection 12(1) of the Code was reasonable.

In making a decision under subsection 12(1), the Senator was required to consider the exceptions under subsection 11(2) of the Code, which she did. As noted earlier, the Bill does not specifically target any one industry that contributes to greenhouse gas emissions, nor does it appear to exclude any. On its face, it appears to target all emitters. As such, it would likely have affected a very broad class. There is no evidence to support the conclusion that the Bill, through regulations, would have specifically targeted Oilsands Quest Inc., or even the fossil fuel industry alone. In fact, given what the Environment Minister has publicly stated about the Government's approach to reducing greenhouse gas emissions, this would have been highly unlikely. Moreover, and as already noted, the ambitious reduction targets imposed under the Bill would have made it impossible for the Government, through regulations, to target only one or two industries. The Bill would likely have affected all companies, to a greater or lesser extent, operating in any sector of the economy that contributes to greenhouse gas emissions.

In light of the above, Senator Wallin was not required to make a declaration of a private interest under subsection 12(1) of the Code and, consequently, the prohibition against voting in section 14 did not apply to these circumstances.

6. CONCLUSION

In conclusion, I am of the view that:

- Given that the Bill would have affected all companies responsible for greenhouse gas emissions, not only those in the fossil fuel sector but also those in other sectors of the economy, the Bill would only have affected Oilsands Quest Inc. as one of a very broad class. Therefore, under paragraph 11(2)(*b*) of the Code, the Senator is not considered to have furthered her own private interests or those of Oilsands Quest Inc. by having voted on the Bill.

- While Senator Wallin was required to disclose her private interest in Oilsands Quest Inc., both confidentially and publicly, as part of her public disclosure summary (which she did do, as noted earlier), she was not required, under subsection 12(1) of the Code, to make a declaration of a private interest in the Senate when the Bill was under consideration, and consequently, the prohibition against voting in section 14 did not apply to these circumstances. The reason for this conclusion is that, whatever impact the Bill might have had on Oilsands Quest Inc., the company would have been affected as one of a broad class, bringing this matter within the exception in paragraph 11(2)(*b*) of the Code.

In light of the above-stated reasons, I am of the view that the Senator did not contravene section 8, subsection 12(1) or section 14 of the Code. I therefore find that the allegations against Senator Wallin are unsubstantiated and without merit.